BEFORE THE BOARD OF FIRE AND POLICE COMMISSIONERS
VILLAGE OF GLENVIEW, ILLINOIS

IN RE

THE MATTER OF
Glenview Police Officer
Jim Horn

COMPLAINT FOR DISCIPLINARY CHARGES

William Fitzpatrick, Chief of Police of the Village of Glenview Police Department ("Chief Fitzpatrick"), brings the following charges against Glenview Police Officer Jim Horn ("Officer Horn"). Chief Fitzpatrick requests that a hearing be held before the Board of Fire and Police Commissioners of the Village of Glenview, and that the Board take appropriate action against Officer Horn, in accordance with its own Rules, the provisions of Sections 2-497 through 2-501 of the Glenview Village Code, and Section 10-2.1-17 of the Illinois Board of Fire and Police Commissioners Act, 65 ILCS 5/10-2.1-17.

I. Factual Background

1. Chief Fitzpatrick is the duly appointed Chief of Police of the Glenview Police Department.
2. Officer Horn is a non-probationary, sworn member of the Village of Glenview Police Department (hereinafter the "Police Department").
3. At all times relevant to this Complaint, Officer Horn was a Glenview police officer.

A. Testimony of March 31, 2014

4. On June 6, 2013, Officer Horn had assisted the Chicago Police Department in the arrest of Joseph Sperling.
5. The arrest occurred in the Village of Glenview and resulted in the State of Illinois bringing felony charges against Mr. Sperling.

6. On or around March 2014, Officer Horn was subpoenaed by the State to provide testimony about Mr. Sperling's arrest during a Motion to Quash and Suppress Evidence hearing.

7. On March 31, 2014, Officer Horn provided testimony, under oath, about the arrest of Mr. Sperling that had occurred on June 6, 2013.

8. After being duly sworn, he testified to the following:

Q. Sir, you approached my client's vehicle when you pulled him over; is that correct?
A. Correct.
Q. And you went - - Officer Pruente exited the vehicle; is that correct?
A. Correct.
Q. And where did Officer Pruente go?
A. To the driver's side.
Q. And where did you go?
A. To the rear passenger's side.
Q. And so you sat – you stood on the passenger's side of the vehicle; is that correct?
A. Correct.
Q. And did you hear the conversation with Officer Pruente?
A. Yes.
Q. And what, if anything did you hear Officer Pruente say?
A. He initially asked for a driver's license and insurance card from the driver of the vehicle.
Q. And did you hear my client respond to that request?
A. I believe he provided a driver's license and an insurance card.
. . .
Q. And my client was in the vehicle during this conversation; is that correct?
A. Correct.
Q. And you heard Officer Pruente ask my client if he had anything in the vehicle; is that correct?
A. Correct.
Q. And my client freely admitted, yes, I have got some weed in the vehicle; is that correct?
A. Correct.
Q. At that point Officer Pruente said where is it; is that right? (*Id.*, p. 81, ll. 1-24)
A. To the best of my recollection, yes.
Q. And my client said it's in the rear passenger side; is that correct?
A. He said it's in a black back behind the from passenger seat.
Q. Okay. Now, at this time did my client exit the vehicle?
A. He was asked to exit the vehicle by Officer Pruente.
Q. And this is after Officer Pruente asked my client for a driver's license; is that

right?
A. Correct.
Q. This is after Officer Pruente told him he smelled cannabis in the car; is that correct?
A. Correct.
Q. This is after my client informed him that the cannabis was in the black bag; is that correct?
A. Correct.
Q. And this was after Officer Pruente actually got the driver's license; is that correct?
A. To the best of my recollection, yes.
Q. And when my client exited that vehicle, what happened? (*Id.*, p. 82, ll. 1-24)
A. Officer Pruente walked him back to the back of his car between his car and my squad car and I stood with Mr. Sperling while Officer Pruente went back to retrieve that black bag.
Q. And when Officer Pruente went into the vehicle, my client's vehicle, my client wasn't in handcuffs, was he?
A. No, sir.
Q. And officer Pruente went directly into the rear passenger's side; is that correct?
A. To the best of my recollection, yes.
Q. And after Officer Pruente recovered that bag, is when my client was placed in handcuffs; is that correct?
A. Correct.
Q. And that was while he was waiting with you standing behind his own vehicle; is that correct?
A. Between his vehicle and mine, yes.
Q. So how long was my client standing behind his vehicle before handcuffs were placed on him, approximately?
A. A couple of minutes tops.
Q. So a couple of minutes outside his vehicle; is that correct?
A. Yes. (*Id.*, p. 83, ll. 1-24)
. . .
Q. How long did it take Officer Pruente to approach my client from that time to the time my client exited the vehicle?
A. A minute, a little over a minute.
Q. So it's about one minute while Officer Pruente is speaking to my client; that is correct?
A. Correct.
Q. And then about two minutes when he's outside the vehicle before handcuffs are placed on him; is that correct?
A. Correct.
Q. And then my client goes into the rear of your vehicle?
A. Yes, I place him in the rear seat of my marked squad car. (*Id.*, p. 84, ll. 4-18)

9. After Officer Horn's testimony, Mr. Sperling's attorney played the video from the squad car of another officer who was on scene during the time that Officer Pruente approached

Mr. Sperling's vehicle until after Mr. Sperling was arrested and transported to the police station.

10. The video, which will be provided to the Board at the hearing on this matter, shows Officer Pruente approach Mr. Sperling's vehicle, immediately open Mr. Sperling's driver door, take Mr. Sperling out of his vehicle, and place Mr. Sperling in handcuffs. Officer Pruente then searched Mr. Sperling's pockets and escorted him into the rear seat of Officer Horn's squad car. Officer Pruente then returned to Mr. Sperling's car and searched the rear seats. Officer Horn stood at the rear of Mr. Sperling's vehicle during these occurrences.

11. After seeing the video, Judge Haberkorn, outraged, declared the following and directed the Assistant State's Attorney to investigate the charge of perjury against Officer Horn, as well as the other officers:

> Obviously, this is very outrageous conduct. State, I expect you to do something about this and to talk to all the superiors involved in this case. All officers lied on the stand today. The evidence that's been submitted is directly contrary to their testimony, and as counsel said, all their testimony was a lie. So there's strong evidence it was conspiracy to lie in this case, for everyone to come up with the same lie and they were given the opportunity to answer the question several times, all these questions, as to who approached first, as to whether or not the defendant was handcuffed, as to whether or not he was asked for his driver's license and there was a conversation first. Many, many, many, many times they all lied.

B. Formal Interrogation of Officer Horn

12. On June 15, 2015, Officer Horn was the subject of a formal interrogation in regard to the testimony he had provided at the March 31, 2014 proceeding. After being duly sworn, he testified to the following:

> Q. And when you testified during the March 31st motion to suppress hearing, were you testifying based upon your own knowledge, or were you testifying based upon things that other people had told you?

A. When I prepared for court, I reviewed my report. I didn't have an independent recollection of all the incidents, goings-on. When I got there, I was trying to remember how it went. (*Interrogation Transcript*, pp. 34-35, ll. 21-24; 1-5)

. . .

Q. But the details of the incident you didn't have any independent recollection of?

A. Correct. Some of the details I did not.

Q. Do you recall what those details were?

A. Mostly probably regarding the traffic stop itself. (*Id*, p. 36, ll. 5-10)

. . .

Q. How does your testimony that you provided during the motion to suppress hearing differ from your current knowledge of what happened with respect to the Sperling arrest on June the 6th?

A. There's quite a few differences.

Q. Okay. Can you go through them for me, please. (*Id*, p. 39, ll. 15-21)

. . .

A. [The Motion to Suppress transcript] indicates the differences are that Pruente, although during prep said that he went up and had a conversation with the driver of the vehicle, he did not have a conversation with the driver of the vehicle. He did not ask for the driver license or insurance card. He immediately removed [Mr. Sperling] from the vehicle, handcuffed him, did not put him back between the squads with me. He put him directly into my patrol car. I was not up on the passenger side of Sperling's vehicle as I thought I was. Pruente retrieved the cannabis and drugs and cash from the car after Sperling had already been handcuffed and placed in the back of my squad car.

Q. How do you explain the discrepancies between what you believe happened as you sit here today and what you testified to under oath on the 31st of March in 2014?

A. I'm not sure. Like I said, to the best of my recollection, I remembered some of the incidents that occurred. The other during the prep, I don't know if I picked up those types of things and that got my memory confused with other traffic stops I had been in. (*Id*, p. 40, ll. 3-34)

Q. At any time while the State's attorney was prepping you for your testimony, did you advise the State's attorney that you didn't have any independent recollection of the things you were being asked about?

A. I believe so, but I'm not going to say definitely because I don't remember for sure. (*Id*, p. 41, ll. 16-22)

Q. Do you know what points you advised the State's attorney that you weren't sure about?

A. No, I don't. I don't remember the exact conversation that I had with the State's attorney or how forcefully I expressed my opinion or my information.

Q. Now you have been a police officer for a long time, correct?

A. Correct.

Q. And generally speaking, when a police officer is being asked a question on the stand that they don't recall, what would the appropriate response from that police officer be?
A. It could be that I don't recall.
Q. You're not suppose to speculate about things that had happened when you're being questioned under oath about a criminal case, correct?
A. Correct. (*Id*, pp. 42-42, ll. 110-24; 1-16)

. . .

Q. Anywhere in that testimony do you know that you've reviewed it recall telling anyone who was questioning you that you didn't recall the facts or circumstances related to a particular question?
A. I don't believe so, but I don't know for sure. (*Id*, p. 42, ll. 15-21)

. . .

Q. Okay. But, you know, you went through maybe four categories of things that you testified about that you know now were inaccurate, correct?
A. Correct.
Q. Reviewing your testimony now, in any one of those categories as you sit here today do you believe that you should have provided the response that you don't recall or remember?
A. It's possible. . . (*Id*, pp. 43-44, ll. 224, 3-11)

. . .

Q. Officer, generally speaking when you're testifying in a criminal matter, you should be testifying as a police officer based on your own personal knowledge, isn't that correct?
A. Correct.
Q. And so generally speaking when you're asked a question under oath in a criminal proceeding that is beyond your own personal knowledge, you should inform whoever is questioning you of that fact, correct?
A. Yes. (*Id*, pp. 49-50, ll. 4-10)

II. Charges

Charge No. 1 – Making False or Untrue Statements

Based on Officer Horn's false testimony and untruthful statements made under oath during the March 31, 2014 hearing, Officer Horn has violated the following provisions of the Rules and Regulations and Glenview Police Department Policy Manual ("Policy Manual"):

a. Rule 8.3 of the Rules and Regulations, which states in pertinent part as follows:

Prohibited Acts

Rule 8.3(1) Violation or attempted violations of any Federal, State, County or Municipal law.

Rule 8.3(31) Courtroom Demeanor – Failure to be punctual, properly dressed and prepared for trial.

Rule 8.3(32) Testifying, making reports or conducting police business in other than a truthful and cooperative manner.

b. Section 399-04 of the Policy Manual, which states as follows:

Court Appearances

Court Attendance - All personnel shall report promptly for their scheduled court dates and times and will equip themselves with reports and articles of evidence necessary for expedient dispositions of their cases.

Charge No. 2 – Violating the Constitutional Rights of Others

Based on Office Horn's conduct on June 6, 2013, and his false testimony on March 31, 2014, Officer Horn has violated the following provisions of the Rules and Regulations:

a. Rule 8.3 of the Rules and Regulations, which states in pertinent part as follows:

Prohibited Acts

Rule 8.3(21) Violation of the rights of persons in custody

Rule 8.3(53) Failure to thoroughly search for, collect, retain and identify evidence pertaining to persons, property, and locations in any arrest or investigation

Charge No. 3 – Conduct Unbecoming a Glenview Police Officer

Based on Officer Horn's conduct on June 6, 2013 and March 31, 2014, in violation of the Policy Manual and Rules and Regulations, as set forth in Charges 1 and 2, Officer Horn has violated the following provisions of the Policy Manual and Rules and Regulation:

a. Rule 8.3 of the Rules and Regulations, which states in pertinent part as follows:

Prohibited Acts

Engaging in conduct on or off-duty which adversely affects the morale or efficiency of the Department.

b. Section 101-03 of the Policy Manual, which states as follows:

Code of Ethics

All sworn members of the Glenview Police Department are pledged to adhere to the principals of the Law Enforcement Code of Ethics.

AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I RECOGNIZE the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

III. Request for Penalty

Police Chief William Fitzpatrick respectfully requests that a hearing be held before the Board of Fire and Police Commissioners of the Village of Glenview, Illinois, and that the Board terminate Officer Horn's employment as a police officer of the Village of Glenview, Illinois, in accordance with its authority under its own Rules and Regulations and Sections 2-497 through 2-501 of the Glenview Village Code, and that it take such other action(s) as may be just and proper.

Respectfully submitted,

[redacted]

06/26/2015
Date

William Fitzpatrick
Police Chief of the Village of
Glenview Police Department

Attorney for the Village of Glenview
Jason A. Guisinger
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive St 1600
Chicago, Illinois 60606
312/984-6400

BEFORE THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS

IN THE MATTER OF CHARGES AGAINST	)	
	)	**NO. 2015-001**
JAMES HORN	)	
	)	
	)	

TO: Eric G. Patt
Robbins, Salomon & Patt, Ltd.
2222 Chestnut Ave., Suite 101
Glenview, IL 60026
epatt@rsplaw.com

CLOSING ARGUMENT

The evidence has been entered in this case and a fair and impartial review of the evidence can lead to only one disposition in this case: Not guilty on all charges. Officer Horn testified without examining the video because of mistakes made by his employer and the prosecutors. It is noteworthy that both of these agencies, who come before this Board with unclean hands, have brought charges against Officer Horn. I am reminded of something an old coach of mine would say: "Adversity does not *build* character; rather it *reveals* it." The decisions to charge Officer Horn have exposed the feeble character of certain members of the offices of the Cook County State's Attorney and the Glenview Police Department. With this type of leadership we are all in trouble. We are hopeful that this Board will provide a voice for justice in this case.

The complaint and allegations here are based upon three charges. First, Officer Horn is charged with making false or untrue statements; 2) Violating the Constitutional Rights of Others; and 3) Conduct Unbecoming a Glenview Police Officer. The Chief in this case was required to present evidence and prove that Officer Horn was guilty of the charges. *Wagner v. Kramer*, 125 Ill.App.3d (1984) ("the department has the duty to go into a hearing and prove its case."). The Chief failed to meet his burden here on all three charges as discussed fully below. Accordingly, Officer Horn should be found NOT GUILTY of all charges and returned to work with back-pay.

Charge No. 1- Making False or Untrue statements

The Complaint in this case identifies the specific policies and rules Officer Horn allegedly violated with respect to the first charge: Rule 8.3 (1); 8.3 (31); 8.3 (32) of the Rules and Regulations and Section 399-04 of the Policy Manual.

Rule 8.3 (1) Violation or attempted violations of any Federal, State, County or Municipal law

The evidence in this case does not support a finding that Officer Horn violated any federal, state, county or municipal law. The aforementioned charge is based upon the court proceeding and testimony of Officer Horn in the criminal case of *People v. Spurling* on March 31, 2014. During the hearing here, the Board took issue with Officer Horn's attorney's questioning of the assistant state's attorney regarding the sequence of events leading up to Officer Horn's testimony at the motion. Counsel indicated that the questioning was proper because it went directly toward the mental state of Officer Horn at the time he testified. The mental state is an element which the Chief was required to prove in this case. Considering that Officer Horn has been charged criminally with the offense of Perjury, counsel for Horn noted that false or mistaken testimony was not necessarily perjury. In most instances it is nothing more than impeachment. The Board indicated that the charge included crimes other than perjury, It specifically mentioned contempt. Based upon this inquiry by the Board, Counsel for Horn requested that he be allowed to file a Bill of Particulars or in the alternative that the Chief identify the specific law alleged to have been violated by Officer Horn. Both requests were denied. However, it is apparent that perjury and/ or contempt are the only laws at issue in this charge. Officer Horn does not waive his due process argument.

When an employee is alleged to have violated department policy via a criminal act, the department is required to prove all elements of the criminal act. *Tinner v. Police Board of the City of Chicago*, 378 N.E.2d 1166 (Ill.App. 1978). In *Tinner*, a police officer was charged with violating Rule 1 of the Chicago Police Department which prohibits, "(v)iolation of any law or ordinance." *Id.* This is precisely the same charge as the one at issue. In that case, it was established that the officer provided false testimony which contradicted prior sworn testimony. However, the Illinois Appellate Court held that "uttering a false statement under oath does not establish perjury." *Id.* The Court reasoned that in order to establish perjury, the charging party must demonstrate that the false statement was material to the issue, and that the defendant did not believe the statement to be true. In the case at bar, the evidence is undisputed that Officer believed his mistaken testimony was true at the time he testified. This is exactly what Officer said when he testified at the hearing. The Chief failed to present any evidence to dispute this fact. A finder of fact may not reject unrebutted testimony, *Bucktown Partners v. Johnson,* 119 IllApp3d 346, 353 – 55 (1983).

Illinois statue holds that Horn could not be guilty of any crime relating to his mistaken testimony.

> (720 ILCS 5/4-3) (from Ch. 38, par. 4-3)
> Sec. 4-3. Mental state.
> (a) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by

the statute defining the offense, he acts while having one of the mental states described in Sections 4-4 through 4-7.

(b) If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element. If the statute does not prescribe a particular mental state applicable to an element of an offense (other than an offense which involves absolute liability), any mental state dined in Sections 4-4, 4-5 or 4-6 is applicable.

(c) Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such.

(720 ILCS 5/4-4) (from Ch. 38, par. 4-4)

Sec. 4-4. Intent.

A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct.

(720 ILCS 5/4-5) (from Ch. 38, par. 4-5)

Sec. 4-5. Knowledge. A person knows, or acts knowingly or with knowledge of:

(a) The nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.

(b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be caused by his conduct.

Conduct performed knowingly or with knowledge is performed wilfully, within the meaning of a statute using the term "willfully", unless the statute clearly requires another meaning.

When the law provides that acting knowingly suffices to establish an element of an offense, that element also is established if a person acts intentionally.

(720 ILCS 5/4-8) (from Ch. 38, par. 4-8)

Sec. 4-8. Ignorance or mistake.

(a) A person's ignorance or mistake as to a matter of either fact or law, except as provided in Section 4-3(c) above, is a defense if it negatives the existence of the mental state which the statute prescribes with respect to an element of the offense.

What is more, an objective review of the facts proves that Officer Horn had no incentive to knowingly provide mistaken testimony. The evidence established that Officer Horn was not the arresting officer. The only reason for his limited involvement was the fact that the arrest took place by Chicago Police Officers in the Village of Glenview. He was used only for his marked Glenview police car. The stop had to be conducted by a Glenview squad. This is precisely why Officer Horn was ordered by his superiors, a Glenview commander and sergeant, to accompany the Chicago Police Officers and use his vehicle to curb the offending vehicle. He was not an arresting officer. Officer Horn did not have any axe to grind with the offender Spurling. He did not benefit in any way from the arrest and prosecution of Spurling. These undisputed facts prove that Officer Horn simply made a mistake. He was impeached by the defense attorney, a routine occurrence in every court in every jurisdiction. Furthermore, the errors committed by the Glenview Police Department and the Cook County State's Attorney's Office, which will be discussed below, serve as undeniable evidence that Officer Horn did not knowingly provide a false statement. The evidence must clearly establish that a person did not believe the statement to be true at the time it was made. *People v. Gettings*, 116 Ill.Appp.3d 657 (1983). In case directly on point, the Illinois Appellate Court held that a police officer who testified falsely in a criminal proceeding did not commit a crime. Rather, the Court concluded that the officer's false testimony "was simply an unfortunate mistake and not willfully and purposefully given. *People v. Moore* 975 N.E.2d 1083 (2012). In *Moore*, an individual was arrested and convicted for possession of a controlled substance. The arresting officer's testimony was the basis for the finding of guilty by the court. In a post-trial motion, the defendant raised a due process argument claiming that his rights were violated by the officer who falsely testified to a key fact in the case. At the criminal hearing, the officer testified that money given to a confidential informant was found on the defendant. However, at a previous court proceeding, the officer testified that the money was found on a passenger in defendant's vehicle. The Court concluded that the officer's mistaken testimony was the result of a mistake in his police report about on whom the informant's money was found. The mistaken testimony in Moore was clearly more material than the mistaken testimony in the case at bar. At the hearing for Officer Horn, it was established that the following statements were false:

- Horn testified that he went "to the rear passenger's side" (of the curbed vehicle)
- Testimony about Spurling being placed in handcuffs after the cannabis was recovered

The mistaken testimony about these facts is benign compared to Moore, and were not material to the issue on point, as discussed more fully below. Officer Horn was at the rear of the vehicle, just not on the passenger side. Spurling was placed into handcuffs but it was before the arresting officer took physical possession of the contraband.

Officer Horn's mistaken testimony was nothing more than that: a mistake. He was impeached. Accordingly no criminal law was violated. The record plainly supports the fact that

Officer Horn did not willfully and knowingly provide false testimony. The evidence established that:

- Horn had no knowledge about the criminal activity of Spurling prior to being assigned to assist the officers from Chicago, nor did he have any involvement with Spurling leading up to his testimony;
- Horn had an extremely limited role in the arrest;
- Horn was not listed as an arresting officer in the case;
- Horn did not prepare any reports of the incident other than a general report documenting the Village of Glenview's involvement in the case
- Horn only appeared in court one time in the case, although he appeared the month prior but the case was continued and Horn did not testify or speak with the prosecutor on this day;
- When he testified almost eleven (11) months had elapsed since the arrest (knowledge of falsity at time of utterance is an essential element which must be proven from the evidence. *People v. Laboy* 227 Ill. App.3d (1992);
- Horn reviewed the police reports for the first time on the day he testified;
- Horn was prepped together with the Chicago Police Officers who provided a description of the events consistent with the narratives of the police reports;
- He was informed by the prosecutor that she likely would not call him as a witness in the case
- The majority of Horn's testimony was one or two word answers to closed-ended questions by the defense attorney.
- The purported subject of the motion was the traffic stop, as confirmed by the prosecutor. ASA testified that she was concerned with Horn's report about the seemingly pre-textual nature of the stop. She prepped him on this issue twice;
- Horn did not hear other officers testify as there was a motion to exclude witnesses, therefore he believed the basis of the motion was limited to traffic stop. Prosecutor confirmed this on her cross of Horn as the only area she attempted to rehabilitate his testimony was on the initial stop.
- Prosecutor was given several opportunities by the Court to review the videotape prior to Horn testifying. She declined each time
- The prosecutor did not inform Horn that there was a video even after it had become apparent to everyone in the courtroom. The defense attorney told the Judge he needed a break so that he could retrieve video equipment from the ASA office. This request was before Officer Horn was called to testify
- Defense attorney wheeled into the courtroom a television and VCR.
- The state failed to recall Officer Horn to allow him to correct his mistaken testimony

Not material –false statement not enough, must be material to issue

Even if Officer Horn did testify willfully and knowingly, which he clearly did not, the evidence proved that his testimony was not material to the issue to which he testified. Accordingly, Officer Horn did not violate any criminal laws. Alleged false statement giving rise to perjury charge must be a statement of fact and not a conclusion. *People v. White,* 59 Ill.2d 416 (1974). Answers to questions subject to various interpretations not perjury. *People v. Wills,* 44 Ill.App.3d 585 (1976). Perjured testimony must be material to the issue, not merely cumulative. *People v. Mason,* 60 Ill.App.3d 463 (1978) Used of the terms "possibly", "to the best of my knowledge" and "not that I remember", indicates that testimony is to a witness's belief not a statement of fact. *People v. Watson* 85 Ill.App.3d 649 (1980).

During questioning by the defense attorney, Officer Horn indicated that he did not fully understand the line of questioning. Horn stated, "I don't understand your question." *Transcript, criminal proceeding,* p. 84. This question was posed during the exchange that the Chief cited in his complaint in which he alleged Officer Horn provided false testimony. The charges however skip directly over this question. This omission from the charges was not a mistake; rather it is an admission that the facts do not support the charges in this case. Officer Horn also repeatedly prefaces his answers to questions with : "To the best of my recollection" Id. p. 82 lines 2 and 22, 83 line 11. What is more, the exact location where Horn stood and the exact timing of when Spurling was placed into handcuffs were not material to the issue to which Horn was testifying. The undisputed evidence at Horn's administrative hearing showed that there was probable cause to curb his vehicle with or without a traffic violation (as confirmed by Glenview Commander's conversation with Horn and Sgt. Urbanowski); there was a strong odor of cannabis evident to Horn as he exited his vehicle; and Spurling had in his vehicle the narcotics identified during the pre-stop investigation. The officers' actions in stopping the vehicle; placing Spurling in handcuffs and recovering the narcotics from the vehicle were lawful and justified based upon the totality of the circumstances. In other words, had the officers testified consistently with the video, the court would have had no reason to grant the defendant's motion to suppress. Accordingly, Officer Horn's testimony was not material to the motion.

At the hearing, the Board indicated that the first charge was not limited to the criminal offense of perjury, and that it could in fact include charges of Contempt. The evidence does not support of finding of guilt for this offense for many of the same reasons argued above. The Illinois Appellate Court has determined that "before a defendant can be found guilty of direct contempt, it must appear that …defendant knew they were untrue when they were made." *People v. Randall,* 89 Ill.App.3d 406. For all the reasons argued above, Officer Horn did not violate law of Contempt.

Rule 8.3 (31) Courtroom Demeanor

The Chief has failed to prove that Officer Horn was guilty of violating Rule 8.3 (31). There was no evidence presented that Officer Horn should or could have done anything further to prepare for trial. On the contrary, the evidence proved that Horn could not have prepared himself any differently. In hindsight it would have been helpful if Officer Horn viewed the video at issue in this case. However, it is undisputed that Horn did not know there was a video. The witness from the Glenview Records division testified that the evidence officer was the only person responsible for obtaining videos. It was also proven that Horn could not have accessed the video even if he had known about its existence. The prosecutor failed to properly prepare Officer Horn for his testimony even after the existence of the video became apparent. The evidence at the hearing shows that the defense attorney subpoenaed the video on more than one occasion. One of the subpoenas has a return address to the Clerk at the Criminal Division of the Skokie Courthouse. What is more, the evidence showed that an ASA in Skokie indicated in a phone call with the records department of Glenview that they could disregard his subpoena for the video at issue. This notation was days after Officer Horn's testimony. It is reasonable to infer that the ASA told Glenview to "disregard" the subpoena because the State was already in possession of the video. It is also reasonable to infer, based upon the subpoena being returnable to the Skokie courthouse, that the State's Attorney's office had possession of the video prior to Officer Horn's testimony and for whatever reason, failed to show it to him before he testified. There is no question that everyone involved in this case would like to turn back time and have the ability to view the video prior to testifying. This is impossible and the damage is done. However, it would be improper for this Board to consider this case with the benefit of hindsight 20/20 vision. The Board must consider Officer Horn's testimony in the context in which it was given.

Section 399-04-All personnel shall…equip themselves with reports and articles of evidence necessary for expedient dispositions of their cases

For all the above mentioned reasons, the Chief has failed to prove this charge against Officer Horn.

Charge No. 2-Violating the Constitutional Rights of Others

Rule 8.3 (21) Violation of the rights of persons in custody

Spurling was not in custody on March 31, 2014, the day in which Officer Horn testified. Therefore, the Chief has failed to prove this charge for this date. Concerning the day of the arrest June 6, 2013, the evidence does not prove that Officer Horn violated Spurling's rights. As argued above, Officer Horn was not the arresting officer in this case. Officer Horn's only involvement was the traffic stop of Spurling's vehicle. For all

the reasons discussed above, Officer Horn conducted a lawfull traffic stop and Spurling was placed under lawful arrest for possessing narcotics. See *Illinois v. Lafayette* 462 US 660 (1983); *People v. Daniel* 987 N.E. 470, (1st Dist. 2013).

Charge No. 3-Conduct Unbecoming a Glenview Police Officer

For all of the reasons stated above, the Chief has failed to prove that Officer Horn violated this charge.

Conclusion

The Chief was required to prove the charges in this case and he failed to do so. Courts and hearing boards, such as this one, are required to apply certain standards when deciding disciplinary cases. First, they must evaluate whether the charges have been proven. 2) Was the punishment sought by the employer disproportionately serve under all the circumstances?; 3) Was the officer's misconduct the product of action or inaction by the employer?; 4)Did the employer take into consideration the officer's good or exemplary work history?; 5) Did the employer take into consideration mitigating and aggravating circumstances?

This case had a tragic end. The prosecutor's office, the Glenview Police Department and Officer Horn have all had their names dragged through the mud as a result of this case. However, terminating a dedicated 20 plus-year employee, who has never been disciplined and whom the Chief described as an "excellent" officer, for the mistakes and failures of his employer and the prosecutors would make this tragedy much worse. The interests of public policy would not be served by firing Officer Horn, in fact it would have the opposite effect. We ask this Board to be the source of reason here. Officer Horn, and the residents of Glenview, deserves a fair and impartial review of the facts of this case based upon the totality of circumstances. Respectfully, we ask that the Board find that the Chief failed to prove the charges in this case and that Officer Horn be found not guilty of all charges.

Dated: August 4, 2015

Respectfully Submitted,

[redacted]

Daniel Q. Herbert

The Law Offices of Daniel Q. Herbert
and Associates
206 S. Jefferson, Suite 100
Chicago, IL 60661
(312) 655-7660
Attorney No. 39917

BEFORE THE BOARD OF FIRE AND POLICE COMMISSIONERS
VILLAGE OF GLENVIEW, ILLINOIS

IN RE	)
	)
THE MATTER OF	)
Glenview Police Officer	)
Jim Horn	)

CLOSING ARGUMENT BRIEF

NOW COMES William Fitzpatrick, Chief of Police of the Village of Glenview Police Department ("Chief Fitzpatrick") and for his closing argument in the above captioned matter, states as follows:

INTRODUCTION

In this case, Village of Glenview Police Officer James Horn ("Horn") testified under oath during a March 31, 2014 suppression hearing related to a felony narcotics prosecution. The evidence in this case is uncontroverted that Horn provided false and untruthful testimony during the suppression hearing, which resulted in felony criminal charges being dismissed against Joseph Sperling, despite the fact that a large amount of marijuana was recovered from Mr. Sperling's vehicle. Thus, Horn was charged with three (3) counts of misconduct in this matter for: (1) providing false and untruthful testimony; (2) violating the constitutional rights of Mr. Sperling; and (3) conduct unbecoming a police officer.

The evidence in this case proves that Horn is guilty of the charges against him. Further, the misconduct at issue in this case constitutes cause for Horn's termination as a police officer for the Village of Glenview.

EVIDENCE

On July 27 and 28 of 2015, the Glenview Board of Fire and Police Commissioners ("BFPC") conducted a hearing on the charges against Horn. The evidence elicited during the hearing substantiates all three (3) charges against Horn.

1. Charge No. 1 – Providing False and Untruthful Testimony

In this case, Horn was charged with providing false and untruthful testimony during the March 31, 2014 suppression hearing. The testimony he provided under oath during the suppression hearing completely contradicted by the video recording of the incident. In fact, Officer Horn admitted to the BFPC that his testimony during the March 31, 2014 suppression hearing was false and untruthful.

After seeing the video, Judge Haberkorn, who presided over the criminal prosecution of Mr. Sperling, declared the following and directed the Assistant State's Attorney to investigate a charge of perjury against Officer Horn, as well as the other officers:

> Obviously, this is very outrageous conduct. State, I expect you to do something about this and to talk to all the superiors involved in this case. All officers lied on the stand today. The evidence that's been submitted is directly contrary to their testimony, and as counsel said, all their testimony was a lie. So there's strong evidence it was conspiracy to lie in this case, for everyone to come up with the same lie and they were given the opportunity to answer the question several times, all these questions, as to who approached first, as to whether or not the defendant was handcuffed, as to whether or not he was asked for his driver's license and there was a conversation first. Many, many, many, many times they all lied.

The Assistant State's Attorney, Jennifer Dillman, testified before the BFPC in this matter and confirmed that Officer Horn's testimony during the March 31, 2014 suppression hearing was false and untruthful, in the exact same way that Judge Haberkorn noted. The false and untruthful nature of Horn's testimony on March 31, 2014 has not been contradicted by Horn.

The transcript from the March 31, 2014 suppression hearing has been entered into evidence in this case containing the verbatim statements of Horn. The video recording of the June 6, 2013 traffic stop of Mr. Sperling has also been entered into evidence in this matter. Comparing Horn's testimony from the suppression hearing with the video recording of the June 6, 2013 traffic stop, the BFPC will come to exactly the same conclusion as Judge Haberkorn that Horn's testimony during the suppression hearing was false and untruthful and contained numerous lies.

Significantly, Horn does not provide any reasonable explanation as to why he provided false and untruthful testimony at the suppression hearing. The only explanation provided by Horn is that he relied on what others told him. Based on Horn's own admissions to the BFPC and statements made during his formal interrogation, he should have testified based on his own personal knowledge. If he did not have personal knowledge of the June 6, 2013 traffic stop, or could not recall the events, he should have advised the prosecuting attorney of this fact, but did not do so.

According to ASA Jennifer Dillman, she prepped Horn and the other officers who testified in the March 31, 2014 suppression hearing for forty (40) minutes. At no point during this preparation did Horn advise Ms. Dillman that he was unclear about the facts surrounding Mr. Sperling's arrest, although he had ample opportunity to do so.

As a sworn police officer, Horn had an obligation to testify truthfully. Horn took an oath to tell the truth. Horn had an obligation to testify from his own personal knowledge. Horn did not satisfy this obligation.

Further, the untruthful and false nature of Horn's testimony at the suppression hearing is underscored by the fact that all five (5) of the police officers who testified at th suppression hearing testified falsely in the exact same way. It is beyond possibility that all five (5) of the officers could be mistaken in the exact same way and provided the same false and untruthful sworn testimony. Any assertion by Horn that his testimony was a mere mistake is incredible.

Based on the above, Chief Fitzpatrick has proven Charge No. 1 that the testimony of Horn was false and untruthful.

2. Charge No. 2 – Violating the Constitutional Rights of Others

Clearly, Horn violated the constitutional rights of Sperling by providing false and untruthful testimony during the March 31, 2014 suppression hearing. A defendant in a felony criminal proceeding has a due process right to a fair and impartial trial. In this case, Mr. Sperling was deprived of his due process rights due to Horn's untruthful and false testimony. Horn lied in order to obtain a conviction of Mr. Sperling. Judge Haberkorn recognized the violation of Mr. Sperling's constitutional rights by granting the motion to quash the arrest and suppress the evidence. Thus, Charge No. 2 is supported by the evidence.

3. Charge No. 3 – Conduct Unbecoming a Police Officer

A Glenview Police Officer is guilty of conduct unbecoming a police officer if he or she engages in on-duty conduct which adversely affects the morale and efficiency of the Police Department.

In regard to this charge, Chief Fitzpatrick testified that the misconduct of Horn made national media headlines. Also, the misconduct led to Horn being charged with felony perjury.

Certainly, this brings disrepute on the Glenview Police Department and adversely impacts the efficiency of the Department in that this matter stains the reputation of the Department and calls into question other criminal matters involving the Department. Each police officer has the right to expect that his fellow officers will act truthfully in the performance of their duties. Any conduct undermining this right adversely affects the morale and efficiency of the Glenview Police Department.

Also, Jennifer Dillman testified that a *Brady* instruction would be necessary in all future criminal prosecutions involving Horn, which will invariably hamper the efficiency of the Department's efforts to prosecute crimes.

Certainly, the fact that Horn testified falsely and untruthfully under oath during the Sperling matter, constitutes conduct unbecoming a police officer.

JUST CAUSE FOR TERMINATION

Having established that Horn is guilty of the charges against him, it is now necessary for the BFPC to determine whether the charges provide good cause for his termination. A core duty of every police officer is to testify as a witness in trials of alleged perpetrators of crime. When a police officer commits conduct that undermines his ability to testify there is little doubt that the misconduct is detrimental to the efficiency of the service and that public opinion would recognize such misconduct as good cause for his discharge.

In order to discharge a police officer, the BFPC must determine that the conduct of the officer constitutes a substantial shortcoming which renders the continuance in office in some way detrimental to the discipline and efficiency of the service and something which the law and sound public policy recognize as good cause for that officer no longer occupying his position.

Fantozzi v. Board of Fire and Police Commissioners of the Village of Villa Park, 27 Ill.2d 357, 360 (1963). The BFPC has considerable latitude and discretion in determining what constitutes cause for discharge. *Sangirardi v. Village of Stickney,* 342 Ill.App.3d 1, 17 (1st Dist 2003).

In *Oak Lawn v. Illinois Human Rights Commission,* 133 Ill.App.3d 221 (1st Dist 1985), the Appellate Court stated that "[t]rustworthiness, reliability, good judgment and integrity are all material qualifications of any job, particularly one as a police officer. 133 Ill.App.3d at 224.

As the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness." *Sindermann v. Civil Service Commission,* 275 Ill.App.3d 917, 928 (2nd Dist 1995). Moreover, there are numerous cases that have found that providing false or untruthful statements constitutes a substantial shortcoming and good cause for discharge. See, *Noro v. Police Board of the City of Chicago,* 47 Ill.App.3d 872 (1st Dist 1977); *Thanasouras v. Police Board of the City of Chicago,* 33 Ill.App.3d 1012 (1st Dist 1975); *Kupkowski v. Board of Fire and Police Commissioners of the Village of Downers Grove,* 71 Ill.App.3d 316 (2nd Dist 1979); *Merrifield v. Illinois State Police Board,* 294 Ill.App.3d 520 (4th Dist 1998); *Valio v. Board of Fire and Police Commissioners of the Village of Itasca,* 311 Ill.App.3d 321 (2nd Dist 2001); *Rodriguez v. Weis,* 408 Ill.App.3d 663 (1st Dist 2011).

Further, in *Valio v. Board of Fire and Police Commissioners of Village of Itasca*, the court found that "the failure of an officer to provide truthful statements during a department investigation could impair the department's ability to properly and fully investigate violations of departmental regulations. Such a failure could impugn the integrity of the investigation and the department and adversely affect the department's ability to provide efficient service to the community." 311 Ill.App.3d 321, 331 (2nd Dist. 2000). Here, Horn's misconduct is even more

severe than that at issue in *Valio*, as Horn's misconduct adversely affects the ability of the Glenview Police Department to enforce the law, which is obviously the primary purpose of the Glenview Police Department.

These cases reveal that where a police officer's dishonesty or untruthfulness relates to his duties to the public, such conduct constitutes a substantial shortcoming which renders the continuance in office detrimental to the discipline and efficiency of police service and something which the law and a sound public opinion recognize as good cause for that officer no longer occupying his position.

In *Rodriguez v. Weis*, the Illinois Appellate Court held that:

> A police officer's credibility is inevitably an issue in the prosecution of crimes and in the ... police department's defense of civil lawsuits. A public finding that an officer had lied on previous occasions is detrimental to the officer's credibility as a witness and as such may be a serious liability to the department. *Rodriquez*, 408 Ill.App.3d at 671.

Based upon this reasoning, the *Rodriquez* court found that the officer's lack of honesty was a sufficient basis for discharge.

In this case, Horn had a sworn obligation to uphold and enforce the laws of the State of Illinois. This obligation includes providing truthful and accurate testimony in criminal proceedings, especially in cases where an individual's liberty is at stake.[1] Horn failed to uphold this obligation when he testified falsely in a felony narcotics prosecution.

Consequently, Horn's credibility when testifying in any future criminal proceeding will invariably be called into question. In fact, according to the testimony of Assistant State's

[1] It is expected that Horn will argue that the Sperling arrest was a routine traffic stop and he simply forgot the facts surrounding the arrest. However, Horn testified that the Sperling arrest was the only time during his 16 year career as a Glenview Police Officer where a Chicago Police officer rode in his Glenview police vehicle for law enforcement purposes. Further, Horn testified that he has only testified in three (3) or four (4) narcotics cases in his career. Thus, the idea that the Sperling arrest was a routine traffic stop is incredible.

Attorney Jennifer Dillman, as well as the holding in *Rodriguez*, the fact that Horn was untruthful and provided false testimony on March 31, 2014 and was charged with felony perjury as a result, will need to be disclosed to defense counsel in any future criminal prosecution involving Horn. See *Brady v. Maryland*, 373 U.S. 83 (1963). This makes Horn's continued service as a Glenview police officer untenable as it will negatively impact the ability of the Glenview Police Department to prosecute crimes.

WHEREFORE, Police Chief William Fitzpatrick respectfully requests that the Board terminate Officer Horn's employment as a police officer of the Village of Glenview, Illinois, in accordance with its authority under its own Rules and Regulations and Sections 2-497 through 2-501 of the Glenview Village Code, and that it take such other action(s) as may be just and proper.

Respectfully submitted,

/s/ Jason A. Guisinger
Counsel for William Fitzpatrick
Police Chief of the Village of
Glenview Police Department

Jason A. Guisinger
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive St 1600
Chicago, Illinois 60606
312/984-6400
jaguisinger@ktjlaw.com

THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS

IN THE MATTER OF CHARGES AGAINST JAMES HORN	)	**No. 2015-001**

DECISION OF THE BOARD

THIS CAUSE coming to be heard before the Board of Fire and Police Commissioners of the Village of Glenview, Illinois (the "Board"), charges having been brought by Police Chief William Fitzpatrick (the "Chief") against Police Officer James Horn ("Horn"), both of the Glenview Police Department; the Board having jurisdiction over the charges and being advised in the premises, both parties being represented by counsel in an open hearing, the Board having heard and considered the testimony of the witnesses presented, having observed the demeanor of said witnesses, having considered arguments of counsel, and having reviewed exhibits introduced into evidence in the above matter, finds and holds as follows:

Statement of Charges

On June 26, 2015, the Chief filed a Complaint for Disciplinary Charges (the "Charges"), consisting of three separate charges against Horn; specifically, (1) making false or untrue statements, (2) violating the Constitutional rights of others, and (3) conduct unbecoming a Glenview police officer. A copy of the Charges is attached hereto as Exhibit 1.

The essence of the Charges is that Horn, on March 31, 2014, at a hearing before Judge Catherine M. Haberkorn in the circuit court of Cook County (the "Sperling Hearing"), provided false testimony under oath concerning the arrest of Joseph Sperling, which occurred in Glenview on June 6, 2013. Subsequent to the Sperling Hearing, the Cook County State's Attorney initiated an investigation of Horn, as well as a Glenview Police Sergeant and three Chicago police officers who also provided testimony at the Sperling Hearing. As a result of said investigation, Horn was criminally charged with perjury, a felony, and related misdemeanor offenses. Those charges are pending.

The Hearing

On July 1, 2015, the Board convened to hear the Chief's motion to suspend Horn without pay pending the outcome of the hearing on the Charges. The Chief was present, along with his counsel, Jason Guisinger. Also present was Horn, along with his counsel, Daniel Herbert. After hearing and considering oral argument from both parties, considering the allegations in the Chief's sworn Complaint, and neither party offering any additional evidence, the Board entered an order granting the Chief's motion, suspending Horn without pay pending the outcome of the hearing on the Charges. With the agreement of the parties, the Board then set the matter for hearing on July 27, 2015.

On July 27, 2015, the Board convened for a hearing on the Charges (the "Hearing"). Present at the Hearing were the Chief, Horn, and counsel for both parties. As a preliminary matter, the Board considered the motion of the Cook County State's Attorney to hear certain testimony in closed session, and to seal such testimony pending resolution of the criminal charges against Horn. After hearing oral argument in support of the motion from Assistant State's Attorney Donald J. Pechous, as well as from Mr. Herbert in opposition, the Board denied the State's Attorney's motion, and the hearing proceeded in open session.

Both parties were given the opportunity to make opening statements, and certain evidence was stipulated to by the parties and entered into evidence; specifically, the transcript of the Sperling Hearing was marked as Chief's Exhibit A, and the video of the traffic stop and arrest that was at issue at the Sperling Hearing was marked as Chief's Exhibit B (the "Video"). The Chief then presented his case-in-chief, calling Officer Horn and the Chief as witnesses. Both witnesses were made available to Horn's counsel for cross-examination. The transcript of the Chief's interrogation of Horn was entered into evidence and marked as Chief's Exhibit C. The Chief rested, and the Hearing was continued to the next day.

On July 28, 2015, by agreement of the parties, the Hearing reconvened. Again present were the Chief, Horn, and counsel for both parties. Horn presented his case-in-chief, calling Assistant State's Attorney Jennifer Dillman, Glenview Business Process Manager Jeffrey Rogers, and Horn as witnesses. All witnesses were made available to the Chief's counsel for cross-examination. Sperling's disposition sheet was marked as Respondent Exhibit No. 1, but not admitted into evidence, there having been no motion to admit it. Horn's police report concerning the Sperling arrest was marked as Joint Exhibit No. 1, and entered into evidence. The Chicago police report concerning the Sperling arrest was marked as Joint Exhibit No. 2, and entered into evidence. Several subpoenas issued in the Sperling criminal case were marked as Joint Exhibit No. 3, and entered into evidence. A redacted copy of the Village Records Division's log of subpoenas was marked as Joint Exhibit No. 4, and entered into evidence. Horn rested, and the Chief did not present any rebuttal evidence.

The parties did not make closing arguments, choosing instead to file closing briefs with the Board. Those briefs have been filed, and were considered by the Board.

Findings of Fact

1. The Chief is the duly appointed Chief of Police for the Village.

2. Horn is and, at all relevant times referred to herein, has been a duly appointed, qualified, and acting police officer for the Village for approximately the last 16 years.

3. At all times pertinent to these charges, Horn was assigned as a patrol officer for the Glenview Police Department.

4. In support of the Charges, the Chief's case consisted of (a) his own testimony and testimony provided by Horn, and (b) documentary evidence in the form of exhibits admitted into evidence.

5. In defense of the Charges, Horn's case consisted of (a) his own testimony, the testimony of Assistant State's Attorney Dillman, and that of Mr. Rogers; and (b) documentary evidence in the form of exhibits admitted into evidence.

6. Prior to this matter, Horn had not been disciplined, and was considered by the Chief to be a very good employee.

7. On June 6, 2013, Horn participated in the arrest of Joseph Sperling.

8. After the arrest of Sperling, Horn prepared a written case report (the "Report").

9. On March 31, 2014, prior to the Sperling Hearing, Horn, along with the three Chicago police officers, met with Assistant State's Attorney Dillman to prepare for their anticipated testimony at that hearing.

10. At that time, Horn did not have an independent recollection of the specifics of the Sperling traffic stop.

11. During the preparation with Assistant State's Attorney Dillman, Horn had a copy of the Report in his possession.

12. On March 31, 2014, Horn provided sworn testimony at the Sperling Hearing. Horn's testimony was consistent with that of the three Chicago police officers, as well as the Chicago police report.

13. At the Sperling Hearing, subsequent to Horn's testimony, the Video was played in open court during the testimony of the Glenview Police Sergeant.

14. Horn's testimony at the Sperling Hearing was inconsistent with the Video, and was untruthful and false.

Relevant Testimony

1. The Chief testified that he interrogated Horn during the investigation that led to the filing of the Charges. During such investigation, he determined that Horn was untruthful in his testimony at the Sperling Hearing. The Chief further testified that Horn's untruthful testimony at the Sperling Hearing caused damage to the Glenview Police Department by calling into question the credibility of the entire department, and was a "black eye" for the department. He further testified that having officers that are credible is essential to the efficient operation of the police department.

2. Horn testified that his testimony at the Sperling Hearing was not accurate. He further testified that, at the Sperling Hearing, he did not have an independent recollection of the events that took place during the arrest of Sperling on June 6, 2013. He admitted in his testimony at the Hearing, and during the Chief's interrogation, that (a) an officer testifying on a criminal matter should do so based on his own personal knowledge; (b) at the Sperling Hearing, he should have testified differently than he did; and (c) his testimony at the Sperling Hearing should have been that he did not recall the specific facts of the traffic stop.

Charge No. 1 – Rule 8.3 (Subsections 1, 31, and 32); Section 399-04 of Policy Manual

In order for the Board to decide the issues relating to Charge No. 1, it is necessary to explain the Board's interpretation of Rule 8.3, Subsections 1, 31 and 32, as well as Section 399-04 of the Policy Manual. A copy of Rule 8.3, Subsections 1, 31 and 32 is attached hereto as Exhibit 2, and Section 399-04 of the Policy Manual is attached hereto as Exhibit 3.

Rule 8.3 describes a number of prohibited acts, including:

> Subsection 8.3(1), which prohibits police officers from violating or attempting to violate any Federal, State, County or Municipal law.
>
> Subsection 8.3(31), which requires police officers to be punctual, properly dressed and prepared for trial when testifying in a courtroom.
>
> Subsection 8.3(32), which requires police officers to testify, make reports and conduct police business in a truthful and cooperative manner.

Section 399-04 of the Policy Manual requires police officers to, among other things, equip themselves with reports and articles of evidence necessary for expedient disposition of their cases.

Charge No. 2 – Rule 8.3 (Subsections 21 and 53)

In order for the Board to decide the issues relating to Charge No. 2, it is necessary to explain the Board's interpretation of Rule 8.3, Subsections 21 and 53. A copy of Rule 8.3, Subsections 21 and 53 is attached hereto as Exhibit 4.

Rule 8.3 describes a number of prohibited acts, including:

> Subsection 8.3(21), which prohibits police officers from violating the rights of persons in custody.
>
> Subsection 8.3(53), which admonishes police officers not to fail to thoroughly search for, collect, retain and identify evidence pertaining to persons, property, and locations in any arrest or investigation.

Charge No. 3 – Rule 8.3 (Subsection 38); Section 101-03 of Policy Manual

Although the Chief did not designate the specific subsection of Rule 8.3 that serves as a basis for Charge No. 3, based on the wording of the Charge, we note that it is Subsection 38. In order for the Board to decide the issues relating to Charge No. 3, it is necessary to explain the Board's interpretation of Rule 8.3, Subsection 38, as well as Section 101-03 of the Policy Manual. A copy of Rule 8.3, Subsection 38 is attached hereto as Exhibit 5, and Section 101-03 of the Policy Manual is attached hereto as Exhibit 6.

Rule 8.3 describes a number of prohibited acts, including:

> Subsection 8.3(38), which prohibits police officers from engaging in conduct on- or off-duty that adversely affects the morale or efficiency of the police department.

Section 101-03 of the Policy Manual is the Law Enforcement Code of Ethics, setting forth the standard by which all members of the Glenview Police Department are expected to conform.

Conclusions

1. The narrow issue to be determined by the Board is whether the Chief sustained one or more of the charges filed against Officer Horn; that is: did Officer Horn make false or untrue statements (Charge No. 1); did he violate the Constitutional rights of others (Charge No. 2); and/or did he engage in conduct unbecoming a police officer (Charge No. 3)?

2. The Board notes that Rule 8.3, in Subsections 31 and 32, provides the requirements that police officers testifying in court be prepared for trial, and testify in a truthful manner.

3. The Board concludes that the testimony of the Chief relating to Officer Horn's testimony at the Sperling Hearing is consistent with the other evidence, including the transcript of the Sperling Hearing, the video of the Sperling traffic stop, and the transcript of the Chief's interrogation of Horn, all of which the Board finds persuasive and credible.

4. The Board concludes that the testimony of the Chief relating to the adverse impact Officer Horn's untruthful testimony had on the credibility of the Glenview Police Department, was credible.

5. The Board concludes that Officer Horn's testimony, both during the Hearing and in the Chief's interrogation, that he did not have an independent recollection of the facts of the traffic stop when he testified at the Sperling Hearing, was credible.

6. The Board concludes that Officer Horn's testimony that he should have testified in a different manner at the Sperling Hearing, was credible.

7. The Board concludes that Officer Horn's testimony that his testimony at the Sperling Hearing should have been that he did not recall the specific facts of the traffic stop, was credible.

8. The Board concludes that the testimony of Assistant State's Attorney Dillman was credible, but not relevant to the ultimate issue before this Board.

9. The Board concludes that the testimony of Jeffrey Rogers was credible, but not relevant to the ultimate issue before this Board.

10. The Board places substantial weight on the evidence concerning the need for credibility of police officers, both in court and in the community.

11. The Board concludes that (a) Officer Horn made false and untrue statements in his sworn testimony at the Sperling Hearing; and (b) such testimony adversely affected the morale and/or efficiency of the Glenview Police Department.

12. The Board concludes that the Chief did not submit any evidence or testimony concerning the issue of whether Officer Horn violated the Constitutional rights of others, and thus, the Board does not reach a conclusion as to whether such conduct occurred.

13. The Board notes that Officer Horn had ample opportunity to challenge the Chief's evidence.

14. The Board concludes that the Chief has met his burden of proof by a preponderance of the evidence with respect to Charge No. 1, and that there is cause for sanctioning Officer Horn.

15. The Board concludes that the Chief has not met his burden of proof by a preponderance of the evidence with respect to Charge No. 2, and that Charge is not sustained.

16. The Board concludes that the Chief has met his burden of proof by a preponderance of the evidence with respect to Charge No. 3, and that there is cause for sanctioning Officer Horn.

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Decision

At the beginning of the proceedings, the Chief asked that the Board terminate Officer Horn based on the conduct alleged in the complaint, *i.e.*, providing false and untrue testimony in a criminal proceeding.

Our system of justice cannot operate properly when witnesses do not testify truthfully. Nowhere is this more evident than in the case of a testifying police officer. Often a person's liberty, and even his life, is at stake based on the outcome of a trial in which an officer testifies. Telling the truth is a minimum expectation – indeed, an essential requirement – for a police officer, and that is especially so when testimony is given under oath.

Officer Horn admits that his testimony at the Sperling Hearing was not consistent with the actual facts of the Sperling traffic stop, as shown in the Video. Further, he testified that he did not have an independent recollection of the specific facts of that stop, but did not so testify. In fact, Officer Horn's testimony was consistent with the testimony and police report of the Chicago officers involved in the Sperling traffic stop. It is clear Officer Horn testified in other than a truthful manner at the Sperling Hearing, in violation of Rule 8.3(32).

Contrary to the repeated statements by Officer Horn's counsel, the Charges before this Board do not allege perjury, and the Chief was not required to prove that Officer Horn's failure to testify truthfully was willful. In addition, Officer Horn's defense that he was not properly prepared by the Assistant State's Attorney, and that he was unaware of the Video prior to the Sperling Hearing, is meritless. Even assuming, *arguendo*, errors were made by the Glenview Records Department and/or the Cook County State's Attorney's office, this does not excuse Officer Horn's failure to provide truthful testimony at the Sperling Hearing. No rule or principle of law supports that position.

Moreover, it should be noted that the Board's conclusion regarding Charge No. 2 (especially, the allegation of a violation of Subsection 8.3(53)) includes the Board's rejection of any implicit argument that Officer Horn, under the circumstances present in this case, had an obligation to review or produce the Video. That conclusion, however, does not excuse Officer Horn from not being prepared for trial and not testifying truthfully, as alleged in Charge No. 1.

It is clear that Officer Horn's untruthful testimony at the Sperling Hearing adversely impacted the Glenview Police Department, and that said testimony not only permanently impacts Officer Horn's effectiveness as a witness, but also calls into question the credibility of Glenview police officers, thus adversely affecting both the morale and efficiency of the Department, in violation of Rule 8.3(38).

Accordingly, the Board finds that Officer James Horn's misconduct shows a substantial shortcoming in the performance of his duties as a police officer for the Glenview Police Department and poses actual and potential harm to the Glenview Police Department's current and future operation and efficiency; and, as a consequence, the Board hereby orders that Officer Horn be and hereby is terminated from the Glenview Police Department.

Officer Horn is hereby and herein advised that, in the event he elects to challenge the Decision of the Board, he has 35 days from the date the Decision of the Board is served upon him to file a complaint pursuant to the provisions of the Administrative Review Law (735 ILCS 5/3-101, *et seq.*).

Dated this 24th day of August, 2015.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS

[redacted]

Gino L. DiVito, Chairman

[redacted]

Michael Hogan, Commissioner

[redacted]

Michael Cho, Commissioner

PERSONNEL ORDER: 2015 – 14

TO: ALL PERSONNEL

FROM: W.T. FITZPATRICK
CHIEF OF POLICE

SUBJECT: EMPLOYMENT TERMINATION – J. HORN

EFFECTIVE AUGUST 24, 2015 AND BY ORDER OF THE BOARD OF FIRE AND POLICE COMMISSION, THE EMPLOYMENT OF OFFICER JAMES HORN HAS BEEN TERMINATED WITH THIS DEPARTMENT IN VIOLATION OF POLICE DEPARTMENT RULES AND REGULATIONS 8.3.

RULES AND REGULATIONS 8.3 – PROHIBITED ACTS:

8.3 (32) – Testifying, making reports or conducting police business in other than a truthful and cooperative manner; the theft, unauthorized removal, altering, forging or tampering with any kind of police record, report, or citation; using Department files, sources or reports other than that to which one is properly or legally entitled to in accordance with their duties/assignments is prohibited.

83. (53) – Failure to thoroughly search for, collect, retain and identify evidence pertaining to persons, property and locations in any arrest or investigation.

8.3 (38) – Engaging in conduct on or off-duty which adversely affects the morale or efficiency of the Department.

By Order Of: [redacted]
William T. Fitzpatrick
Chief of Police

Date: August 24, 2015
WTF:se

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PAGE 1 of 5
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES HORN	)	
Petitioner,	)	
	)	**No.**
vs.	)	
	)	
	)	**Board No.: 2015-001**
THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS and POLICE CHIEF WILLIAM FITZPATRICK	)	
Respondents.	)	

COMPLAINT FOR ADMINISTRATIVE REVIEW

NOW COMES the Petitioner, JAMES HORN by his attorneys, THE LAW OFFICES OF DANIEL Q. HERBERT AND ASSOCIATES, and pursuant to the Illinois Administrative Review Act, 735 ILCS 5/3 -- 101 et seq. complaining of the Respondents, The Board of Fire and Police Commissioners of the Village of Glenview, Illinois, ("Board") and Police Chief William Fitzpatrick ("Chief") states as follows:

1. This is a complaint for Administrative Review to review a decision of The Board of Fire and Police commissioners of the Village of Glenview, Illinois. James Horn is a resident of Lindenhurst, Lake County, Illinois and until his discharge by order of the Board was employed by the Village of Glenview Police Department, working as a Police Officer.

2. Respondent Board, and its members and employees and hearing officers are located in the County of Cook Village of Glenview, Illinois. The Board is legally

charged with the responsibility of hearing and deciding charges filed by the Police Chief seeking the discharge of Police Officers such as Petitioner. The Respondent Board is named herein to confer jurisdiction over them by this Court pursuant to the Administrative Review Act. Decisions of the Board are reviewable under the Administrative Review Act.

3. Respondent Chief is located in Cook County, Glenview, Illinois and is named herein to confer jurisdiction over him by this Court pursuant to the Administrative Review Act.

4. Petitioner had been served with charges by the Police Chief on or about June 20, 2012 claiming Petitioner violated several Department Rules while on-duty.

5. On or about July 27 and July 28, 2015, evidentiary proceedings were held before the Board.

6. Thereafter the Board rendered its decision and voted to order Petitioner's discharge as a Glenview Police Officer. The Petitioner was notified via email of the Board's decision dated August 24, 2015. *See* Exhibit A.

7. The Petitioner was served with a copy of the Board's Decision on or about August 24, 2015.

8. Petitioner seeks judicial review of this decision.

9. Petitioner submits the Board, by its decision, violated his procedural rights, exceeded its jurisdiction, and did not proceed legally in reaching its finding and decision.

10. Petitioner contends that the decision of the Board was arbitrary and capricious and against the manifest weight of the evidence, clearly erroneous, and contrary

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to the governing law and regulations based on the totality of the record in this cause, and including but not limited to **inter alia**:

a. Disregarding the procedural rules and regulations governing the rights of officers in such proceedings, including the rules and orders of the Police Department and the collective-bargaining agreement binding the city applicable to this Plaintiff;

b. Disregarding its own disciplinary scheme in regard to police officer rights and conduct;

c. Failing to provide progressive discipline;

d. Ruling was against the manifest weight of the evidence where the complaining witnesses testimony was significantly impeached, in several ways;

e. Rendering its decision in this case which is inconsistent and incompatible with treatment of similarly situated employees, and failing to consider all relevant evidence and law;

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11. Petitioner relies upon all the errors contained within the record of proceedings made at the hearing on this discharge in support of this complaint.

12. Petitioner demands that the Respondents file here a complete copy of the record of proceedings held in this matter, including but not limited to all documents and pleadings and reports contained therein, the transcript of all proceedings, all exhibits, the report of the decision, video or audio recordings of the proceedings and serve a copy of the record on the Petitioner as well.

WHEREFORE, Petitioner prays this Court:

a. Issue an order reversing the decision of the Board.

b. Order Petitioner be reinstated to his position with the Village of Glenview Police Department, or remand for further proceedings.

c. Order compensation to Petitioner for lost wages and benefits, interest, costs and attorney's fees.

d. For such other relief that this Court may deem just, and as allowed pursuant to 735 ILCS 5/3 -- 111.

Respectfully submitted,

/s/Daniel Q. Herbert
Attorney for Petitioner

DANIEL Q. HERBERT
Law Offices of Daniel Q. Herbert
and Associates
206 S. Jefferson, Suite 100
Chicago, IL 60661
(312) 655-7660
Attorney No: 39917

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
Jim Horn v.
The Board of Fire and Police commissioners of the Village of Glenview, Illinois and Police Chief William Fitzpatrick

SERVICE LIST

The Board of Fire and Police Commissioners of the Village of Glenview:

- Gino L. DiVito, Chairman;
- Michael Hogan, Commissioner;
- Michael Cho, Commissioner

1225 Waukegan Rd
Glenview, IL 60025

Police Chief William Fitzpatrick
2500 E. Lake Ave.
Glenview, IL 60025

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Atty. No. 80919

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES HORN Petitioner, vs. THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS and POLICE CHIEF WILLIAM FITZPATRICK Respondents.	)	No. 15 CH ~~14177~~ 14117

ANSWER TO COMPLAINT FOR ADMINISTRATIVE REVIEW

Now come Respondents, THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS (the "BFPC") and POLICE CHIEF WILLIAM FITZPATRICK ("Fitzpatrick"), by and through their attorneys Robbins, Salomon & Patt, Ltd., and for their answer to the "Complaint for Administrative Review" (the "Complaint") filed by Petitioner, JAMES HORN ("Horn"), state as follows:

1. This is a complaint for Administrative Review to review a decision of The Board of Fire and Police Commissioners of the Village of Glenview, Illinois. James Horn is a resident of Lindenhurst, Lake County, Illinois and until his discharge by order of the Board was employed by the Village of Glenview Police Department, working as a Police Officer.

ANSWER: Respondents admit the allegations contained in paragraph number 1 of Petitioner's Complaint.

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CLERK

2. Respondent Board, and its members and employees and hearing officers are located in the County of Cook, Village of Glenview, Illinois. The Board is legally charged with the responsibility of hearing and deciding charges filed by the Police Chief seeking the discharge of Police Officers such as Petitioner. The Respondent Board is named herein to confer jurisdiction over them by this Court pursuant to the Administrative Review Act. Decisions of the Board are reviewable under the Administrative Review Act.

ANSWER: Respondents admit the BFPC is located in Cook County. Respondents further admit that the BFPC, among its other functions, holds administrative

hearings on disciplinary matters, some of which may be based on charges brought by the Chief. Respondents neither admit nor deny the allegations contained in paragraph number 2 of Petitioner's Complaint concerning the reason why Petitioner named the BFPC, as they have no knowledge of Petitioner's thought process. Respondents further state that the provisions of the Administrative Review Act speak for themselves. To the extent the allegations contained in paragraph number 2 of Petitioner's Complaint are inconsistent with said Act, Respondents deny such allegations, and each of them.

3. Respondent Chief is located in Cook County, Glenview, Illinois and its named herein to confer jurisdiction over him by this Court pursuant to the Administrative Review Act.

ANSWER: To the extent the allegation contained in paragraph number 3 of Petitioner's Complaint that the Chief "is located" in Cook County alleges that the Chief works in Cook County, Illinois, Respondents admit same, and deny every other aspect of said allegation. Respondents neither admit nor deny the allegations contained in paragraph number 3 of Petitioner's Complaint concerning the reason why Petitioner named the Chief, as they have no knowledge of Petitioner's thought process. Respondents further state that the provisions of the Administrative Review Act speak for themselves. To the extent the allegations contained in paragraph number 3 of Petitioner's Complaint are inconsistent with said Act, Respondents deny such allegations, and each of them.

4. Petitioner had been served with charges by the Police Chief on or about June 20, 2012 claiming Petitioner violated several Department Rules while on-duty.

ANSWER: Respondents admit that Petitioner was served with disciplinary charges by the Chief, but deny that such charges were served on Petitioner on or about June 20, 2012. Respondents further state that the charges speak for themselves. To the extent the

allegations contained in paragraph number 4 of Petitioner's Complaint are inconsistent with said charges, Respondents deny such allegations, and each of them.

5. On or about July 27 and July 28, 2015, evidentiary proceedings were held before the Board.

ANSWER: Respondents admit that proceedings before the BFPC concerning the disciplinary charges brought by the Chief against Petitioner were held on July 1, 2015, and July 27-28, 2015.

6. Thereafter the board rendered its decision and voted to order petitioner's discharge as a Glenview Police Officer. The Petitioner was notified via email of the Board's decision dated August 24, 2015. *See* Exhibit A.

ANSWER: Respondents admit the allegations of paragraph 6 of Petitioner's Complaint.

7. The Petitioner was served with a copy of the Board's Decision on or about August 24, 2015.

ANSWER: Respondents admit the allegations of paragraph 7 of Petitioner's Complaint.

8. Petitioner seeks judicial review of this decision.

ANSWER: To the extent the allegations in paragraph number 8 of Petitioner's Complaint reference its appeal of the BFPC's Decision dated August 24, 2015, Respondents admit such allegations.

9. Petitioner submits the Board, by its decision, violated his procedural rights, exceeded its jurisdiction, and did not proceed legally in reaching its finding and decision.

ANSWER: Respondents deny the allegations contained in paragraph number 9 of Petitioner's Complaint, and each of them.

10. Petitioner contents that the decision of the Board was arbitrary and capricious and against the manifest weight of the evidence, clearly erroneous, and contrary to the governing law and regulations based on the totality of the record in this cause, and including but not limited to **inter alia**:

a. Disregarding the procedural rules and regulations governing the rights of officers in such proceedings, including the rules and orders of the Police Department and the collective-bargaining agreement biding the city applicable to this Plaintiff;

b. Disregarding its own disciplinary scheme in regard to police officer rights and conduct;

c. Failing to provide progressive discipline;

d. Ruling was against the manifest weight of the evidence where the complaining witnesses testimony was significantly impeached, in several ways;

e. Rendering its decision in this case which is inconsistent and incompatible with treatment of similarly situated employees, and failing to consider all relevant evidence and law.

ANSWER: Respondents deny the allegations contained in paragraph number 10 of Petitioner's Complaint, and each of them.

11. Petitioner relies upon all the errors contained within the record of proceedings made at the hearing on this discharge in support of this complaint.

ANSWER: Respondents deny there were any errors contained in the record of proceedings. Respondents neither admit nor deny the allegations contained in paragraph number 11 of Petitioner's Complaint concerning what Petitioner relies upon, as they have no knowledge of Petitioner's thought process.

12. Petitioner demands that the Respondents file here a complete copy of the record of proceedings held in this matter, including but not limited to all documents and pleading and reports contained therein, the transcript of all proceedings, all exhibits, the report of the decision,

video or audio recordings of the proceedings and serve a copy of the record on the Petitioner as well.

ANSWER: The BFPC states that it will comply with the requirements of the Administrative Review Act, 735 ILCS 5/3-101, *et seq*. Respondents further state that paragraph number 12 of Petitioner's Complaint contains no factual allegations, and should be stricken.

WHEREFORE, the Respondents, THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS and POLICE CHIEF WILLIAM FITZPATRICK, respectfully request this Honorable Court to grant judgment in their favor and against Petitioner pursuant to the Complaint for Administrative Review, and to grant such further relief this Court deems just and equitable.

Respectfully submitted,

[redacted]

Eric G. Patt, One of the Attorneys for Respondents

ERIC G. PATT
Robbins, Salomon & Patt, Ltd.
Attorneys for Respondents
2222 Chestnut Avenue, Suite 101
Glenview, IL 60026
Attorney #80919

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES HORN	)	
Petitioner,	)	
	)	**No. 15-CH-14117**
vs.	)	
	)	**Judge Diane J. Larsen**
	)	
THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS and POLICE CHIEF WILLIAM FITZPATRICK	)	**Board No.: 2015-001**
Respondents.	)	

BRIEF IN SUPPORT OF PETITION FOR ADMINISTRATIVE REVIEW

Now comes the Petitioner, JAMES HORN, by and through his attorneys, The Law Offices of Daniel Q. Herbert and Associates, and respectfully presents this Brief in Support of his Petition for Administrative Review. The Petitioner states as follows:

This case was filed on September 24, 2015 under the Illinois Administrative Review Law. 735 ILCS 5/3-1-1 *et seq.* The Petitioner, James Horn, ("Horn"), seeks to reverse a decision made by the Respondents, William Fitzpatrick, Chief of Police of the Village of Glenview, ("Chief") and The Board of Fire and Police Commissioners of the Village of Glenview, Illinois ("Board"), issued on August 24, 2015, where it discharged Petitioner from his position as a Glenview Police Officer.

The Allegations

The Chief filed a complaint with the Board alleging that Horn had violated provisions of the Rules and Regulations ("Rules") and Glenview Police Department's Policy Manual ("Manual") by his conduct assisting in an arrest that occurred in Glenview with members of the

Chicago Police Department and by Horn's subsequent testimony during a hearing on a motion to suppress evidence held on March 31, 2014 in the criminal matter of *People v. Sperling*, No. 13-CR-1479601. The three charge complaint alleged that Horn's testimony and participation in the arrest and motion to suppress hearing violated provisions of the Rules and Manual. (Tab 1, Complaint)[1]. The complaint charged Horn with: I) 'Making False or Untrue Statements' in violation of Rules 8.3(1), 8.3(31), 8.3(32), and in violation of Section 399-04 of the Manual; II) 'Violating the Constitutional Rights of Others' in violation of Rules 8.3(21) and 8.3(53); and III) 'Conduct Unbecoming a Glenview Police Officer' in violation of Rule 8.3 and Section 101-03 of the Manual. (Tab 1, Complaint for Disciplinary Charges).

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The Board's Hearing and Decision

A two-day hearing was held on July 27 and 28, 2015. The proceedings were conducted by the three member Board, both parties were represented by counsel, and the hearing was recorded by a court reporter. At the close of the live hearing, the Board instructed both parties to file briefs containing their closing arguments. (Tab 12, Transcript of Hearing July 28, 2015, pp.144-45). Horn filed his closing brief on August 4, 2015. (Tab 17, Closing Brief of Respondent). The Chief similarly filed a closing brief. (Tab 18, Closing Brief of Chief Fitzpatrick).

The Board subsequently issued their decision on August 24, 2015. (Tab 19, Decision of the Board). The Board concluded the Chief met its burden by preponderance of the evidence that Horn was guilty of Charge 1 (making false or untrue statements) and there was cause to sanction Horn. (Tab 19, Decision, p. 6). The Board concluded that the Chief also met its burden in

[1] The Record provided to Horn is a tabbed volume lacking Bates Stamps. Thus, citations to the record will be to the Tab number, the Name of the document, and any internal page numbers of the document if the document is internally numbered.

proving Horn was guilty of Charge 3 (conduct unbecoming) and there was cause to sanction Horn. *Id.* Lastly, the Board found that the Chief failed to meet its burden that Horn was guilty of Charge 2 (violating constitutional rights of others). *Id.* Resultantly, the Board ruled that Officer James Horn be terminated from the Glenview Police Department. (Tab 19, Decision, p.7). Horn now petitions this Court for administrative review of the Board's findings and decision.

ARGUMENT

James Horn respectfully submits that there are two reasons why this Court should reverse the decision of the Board. *First*, the complaints charges and the Board's interpretation of the charges violated Horn's due process because they failed to meet the notice requirement required by law. *Second,* Horn maintains that the Board's decision was clearly against the manifest weight of the evidence.

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Legal Standard

A court's scope of review of an administrative agency's decision regarding discharge is a two-step process. *Walsh v. Bd. of Fire and Police Comm'rs of the Village of Orland Park*, 96 Ill. 2d 101, 105 (1983). First, the court must determine if the agency's findings of fact are against the manifest weight of the evidence. *Id.* Second, the court must determine if the findings of fact "provide a sufficient basis for the agency's decision that cause for discharge does or does not exist." *Id.* Here, Horn alleges only that the Board's decision violated his due process and was against the manifest weight of the evidence; therefore the second step required under *Walsh* need not be considered by the Court.

Argument

I. THE CHARGES RELATED TO MAKING FALSE OR UNTRUE STATEMENTS DID NOT SATISFY THE DUE PROCESS NOTICE REQUIREMENT

Horn alleges that his due process rights were violated in three ways by the Chief and the Board. *First*, Horn asserts that the charges drafted in the Chief's complaint cited Rules and Manual violations, yet the charges were not specific in nature to adequately put Horn on notice as how Horn's conduct violated the Rules and Manual. *Second*, when it became clear to Horn's counsel during the hearing that the Board was patently unsure of the specific nature of the charges, Horn's counsel requested a motion for a bill of particulars, yet the Board summarily denied Horn's request. (Tab 12, July 28, 2015 Transcript, pp.63-64). *Third*, after this denial, the hearing progressed and Horn's counsel stated that in light of the Board's interpretation of the charges against Horn, that counsel was still unclear about the specific charges he was defending on behalf of Horn. (Tab 12, July 28, 2015 Transcript, p.68). Counsel then requested a continuance so the Chief could make specific charges that would provide Horn adequate notice to prepare his defense, but the request for a continuance was also expressly denied. *Id.*

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Due process fundamentally requires that the subject of the action receives adequate notice of the charges lodged them. Supreme Court law is clear on this issue. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950). The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970).

A review of the record establishes that Horn was fundamentally deprived of the due process notice requirement. The record demonstrates that Horn's counsel prepared a defense based on the three charges in the Chief's complaint that revolved around allegations Horn had committed perjury during his testimony at the motion to suppress hearing in *People v. Sperling*. The Chief's complaint identified the Rules and Manual violations Horn allegedly violated in Charge I, "Making False or Untrue Statements." Charge I of the complaint stated that Horn violated Rule 8.3(1), which is entitled "Violation or attempted violation of any Federal, State, County, or Municipal law. (Tab 1, Complaint). Charge I also alleged that Horn violated Rule 8.3(31), "Courtroom Demeanor" – Failure to be punctual, properly dressed and prepared for trial. (underlined in original) and Rule 8.3(32), Testifying, making reports or conducting police business in other than a truthful and cooperative manner. *Id.* Charge I also accused Horn of violating Section 399-04 of the Manual, "Court Attendance" – All personnel shall report promptly for their scheduled court dates and times and will equip themselves with reports and articles of evidence necessary for expedient dispositions of their cases. (underlined in original). *Id.*

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The record is clear that Horn was prepared to defend himself against the charges related to his alleged perjury in the motion to suppress hearing. Opening argument by Horn's counsel stated that Horn may have given inaccurate testimony but that by itself was not grounds for termination absent a charge of perjury. (Tab 8, July 27, 2015 Transcript, p.19). Horn's counsel also stated in opening argument that the transcript of the motion to suppress hearing would be in evidence and it would clearly note that Horn prefaced many of his answers with phrases that a court would examine to determine if perjury occurred. (Tab 8, July 27, 2015 Transcript, p.23). Lastly, during direct examination of Assistant State's Attorney Jennifer Dillman, the Board informed Horn's counsel that the hearing was not a proceeding engaged with a perjury charge. (July 28, 2015

Transcript, p.62). Horn's counsel respectfully disagreed and stated that Horn was charged with violating any law and the law at issue was perjury. *Id.*

Due process of law presupposes fair and impartial hearings and on administrative review, a court's duty is to examine the methods employed at the administrative hearing, to insure that a fair and impartial procedure was used. *Abrahamson v. Illinois Dep't of Professional Regulation*, 153 I11.2d 76 (1992). The record shows that the Board at first did not credit that the charge contained any mention that Horn was charged with violating any law. (July 28, 2015 Transcript, pp.62-63). The Board then stated that the charge did not state the criminal law of perjury and the charge could be related to *any* violation of justice. *Id.* at 63. The Board then admitted the utter lack of specificity of the charge when it stated that, "But, again, he's not charged with perjury. *He's charged in a vague way* of violating the county and state municipal ordinance." (Id. at 64) (emphasis added). A review of this portion of the transcript definitively demonstrates that, Charge I was drafted without specificity to place Horn on notice to prepare an adequate defense. Critically, the Board admitted that the charge was completely "vague" and did not allege that Horn violated any specific law.

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Furthermore, the record shows that the Board was not going to consider the mental state of Horn at the time he testified at the suppression hearing as would be required under a charge of perjury, *i.e.* knowledge and materiality. (Tab 12, July 28 Transcript, pp. 69-70). Additionally, the Board summed up their interpretation of the charges by stating, "So, either he consciously spoke falsely, or he was unprepared and, thus, spoke falsely." *Id.* at 69. This statement reveals that the Board believed the Chief's complaint was essentially pled in the alternative. The Chief covered all eventualities in charging Horn, without being specific as to exactly what Horn did wrong under Charge I. Simply put, Horn may have consciously spoken falsely, so Rule 8.3(32),

Testifying, making reports or conducting police business in other than a truthful and cooperative manner, would have been implicated. Alternatively, Horn may have spoken falsely because he was unprepared, thus Rule 8.3(31), Failure to be prepared for trial, and Rule 8.3(32), and Section 399-04 of the Manual, personnel will equip themselves with reports and articles of evidence necessary for expedient dispositions of their cases, would have been implicated.

After eliciting that the Board was conducting Horn's hearing without adequate due process, Horn's counsel requested a motion for a bill of particulars but the Board immediately denied Horn's request. (Tab 12, July 28, 2015 Transcript, pp.63-64). Horn's counsel made and preserved his record and proceeded with the hearing. Once the issue appeared again, Horn's counsel informed the Board that the specific charges were unclear and counsel requested a continuance in order to ensure that Horn was provided adequate notice that would allow him to prepare a defense. (Tab 12, July 28, 2015 Transcript, p.68). The Board also denied Horn's request for a continuance in order to clarify the charges. *Id.* at 68-69.

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Thus, the record demonstrates that Horn's counsel requested both a motion for a bill of particulars and a continuance, yet the Board refused to grant either request that would have secured Horn's due process. Therefore, Horn asserts that the Board erred and denied Horn his fundamental right to due process required by law by failing to grant Horn either manner of requested relief. Relevant case law holds that where allegations of a pleading are wanting in details, opposing party is entitled to a bill of particulars. *In Interest of Walton*, 1979, 34 Ill.Dec. 734, 79 Ill.App.3d 485, 398 N.E.2d 409; *City of Chicago v. Hertz Commercial Leasing Corp.*, 1976, 38 Ill.App.3d 835, 349 N.E.2d 902, affirmed 17 Ill.Dec. 1, 71 Ill.2d 333, 375 N.E.2d 1285, certiorari denied 99 S.Ct. 315, 439 U.S. 929, 58 L.Ed.2d 322; *Hemingway v. Skinner Engineering Co.*, 1969, 117 Ill.App.2d 452, 254 N.E.2d 133. The decision to grant

or deny a continuance is within the Board's discretion but prejudice to the plaintiff can support a basis for reversal. *Bickham v. Selcke*, 216 Ill. App. 3d 453, 459-60 (1st Dist. 1991).

Based on all the above, the Board could and should have granted either Horn's request for a bill of a particulars or his request for a continuance and greater specificity in the charges. Due process could not be satisfied without Horn knowing specifically what law he was alleged to have violated or attempted to violate under Rule 8.3(1). It is unequivocal that the record proves the Board itself was unsure of the nature of the charges lodged against Horn in the Chief's complaint. However, in spite of this knowledge the Board ultimately sustained the sanction of termination against Officer Horn based on Charge I of the Chief's complaint. If the procedures used by an administrative agency during a proceeding violate fundamental fairness and a party's right to due process, the agency's decision should be reversed. *Hearne v. Chicago School Reform Board of Trustees of Board of Education for City of Chicago,* 322 Ill.App.3d 467, 484 (2001). Therefore, James Horn respectfully requests that this court reverse the Board's decision and order Officer Horn restored to his position as a Glenview Police Officer.

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II. THE BOARD'S DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE

Here, Officer Horn asks that this Court examine the record and find that the Board's decision was against the manifest weight of the evidence. Consequently the Board's decision must be overturned. "An administrative agency's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Dept. of Prof'l Reg'n*, 153 Ill. 2d 76, 88 (1992). The Illinois Administrative Review Law provides that an agency's findings on "questions of fact shall be held to be prima facie true and correct." 735 ILCS 5/3¬ 110. However, courts are not obligated to "automatically place a stamp of approval on the

findings of an agency merely because such agency heard the witnesses and made the requisite findings." *Viera vs. Illinois Racing Board*, 65 Ill.App.3d 94, 99 (1st Dist. 1978). The appellate court has also held that "Even under the manifest weight of the evidence standard … the deference afforded the administrative agency's decision is not boundless." *Devaney vs. Board of Trustees of the Calumet City Police Pension Fund*, 398 Ill.App.3d 1, 13 (1st Dist. 2010). Rather, as the 2nd District has stated, "while we may not reweigh the evidence, we will seek to determine whether the decision of the administrative body is 'just and reasonable in light of the evidence presented.'" *Soto vs. Board of Fire and Police Com'rs. of City of St. Charles*, 2013 IL App (2d) 120677, par.22 (citations omitted).

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A court analyzes a board's finding that an employee knowingly made a false statement as a question of fact when a manifest weight of the evidence argument is argued on review. *Taylor v. Police Board of the City of Chicago*, 2011 IL (App) 1st 101156, ¶27. The record reveals that the evidence never contains a definition of the term false statement. Also, the evidence on record to support that Horn made false statements consists solely of Horn's testimony versus what the videotape portrays. As argued *supra*, the Board would not entertain Horn's mental state at the time he provided testimony at the suppression hearing. Therefore, Horn asserts that the Board merely concluded that because Horn's testimony was inconsistent with later produced video evidence that Horn had no knowledge of or was able to review prior to testimony, Horn must have made false statements.

However, the Board's conclusion is against the manifest weight of the evidence. The record shows that Horn stated he did not have an independent recollection of all the events leading to Sperling's traffic stop, and he later explained how his testimony differed from the video. (Tab 8, July 27 Transcript, pp, 40, 54). The record reveals Horn was prepped in

conjunction with the Chicago Police Officers and a round table discussion took place. (Tab 12, July 28 Transcript, pp. 26,33-34.). Lastly, the record is devoid of any evidence that Horn knew or could have known after being prepped with all of the involved officers that the version of events he recollected would contain inconsistencies with a later produced video.

The Board's decision is also against the manifest weight of the evidence because the Chief failed to prove that Horn was guilty of other conduct alleged in Charges I and III for which the Board found cause to sanction Horn. As argued *supra* regarding the lack of specificity of Charge I, the Board itself did not even comprehend what law Horn was alleged to have violated. Logically, the Board could not have found Horn guilty of violating Rule 8.3(1) which comprised Charge I, because there was no evidence on record that Horn violated or attempted to violate any law. The only discussion regarding what law or laws Horn may have violated were raised solely by Horn's counsel in regards to his due process notice arguments.

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The Board's decision is also against the manifest weight of the evidence because the record is replete with evidence that concretely establishes Officer Horn could not have been found guilty of violating the additional rules comprising Charge I; Rule 8.3(31) and Section 399-04 of the Manual, which both imposed an administrative duty on Horn to equip himself with reports and articles of evidence *i.e.* the squad car video, prior to any courtroom proceeding. Critically, the record demonstrates that:

- Chief Fitzpatrick himself testified that he was unaware of anyone informing Horn or Sergeant Urbanowski that a video was recovered in the case. (Tab 8, July 27, 2015 Transcript, pp. 70-71).
- The Board questioned Chief Fitzpatrick as to whether Horn was ever told or provided with a video in the case and the Chief replied that Horn was not. (Tab 8, July 27, 2015 Transcript, p. 88).
- ASA Dillman testified that she never asked the officers she prepped, which included Horn, if video existed. (Tab 12, July 28, 2015 Transcript, p.51).
- The Board stated that, "Officer Horn was unaware that there was a video being

used against him." (Tab 12, July 28, 2015 Transcript, p.66).

- The Board stated it was "not specifically alleged here" that Horn had a responsibility to go and obtain a videotape prior to testifying at the motion to suppress. (Tab 12, July 28, 2015 Transcript, p.67).
- Horn testified that he inquired of Sgt. Urbanowski if she was aware of any video prior to testifying. (Tab 12, July 28, 2015 Transcript, p.130).
- Horn testified that he brought his report of the incident to court. (Tab 12, July 28, 2015 Transcript, p.131).
- ASA Dillman testified that Horn brought his Glenview report to court. (Tab 8, July 27, 2015 Transcript, p.44).

Accordingly, the record establishes that Officer Horn did everything in his power to be prepared for court. He obtained and brought the Glenview report he drafted and he inquired if there was any video evidence available prior to court. Moreover, Horn was not aware of the squad car video that would be used to form the basis for concluding that he made false statements.

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The Board's decision finding Horn guilty of Charge III, alleging unbecoming conduct as a Glenview officer also is against the manifest weight of the evidence. First, the only evidence in the record regarding any unbecoming conduct is strictly related to testimony by the Chief regarding media exposure related to the fact that Horn was implicated in committing perjury; a charge the Board denies was cited in the Chief's complaint or was before the Board for adjudication. Chief Fitzpatrick testified and stated that Officer Horn's untruthful testimony "caused a lot of damage" to the Glenview Police Department and it made national news. (Tab 8, July 27, 2015 Transcript, p.62). The Chief also testified that the judge who presided over the suppression hearing indicated on the stand that Officer Horn had lied. *Id.* at 62-63.

Horn maintains that despite the Board's clever word artistry, Horn's unbecoming conduct was directly related to media exposure regarding alleged perjury by officers involved in the Sperling criminal case. There is no evidence on record that Horn "caused a lot of damage" to the Glenview Police Department because he violated Glenview's Rules and Manual. The Chief

clearly testified that the judge in the Sperling criminal case stated that Horn lied on the stand, which directly implicates an allegation of perjury. As argued *supra*, the Board was adamant that Horn was not being charged with perjury, however the record indicates that the Board was well aware Horn had pending criminal charges for perjury. (Tab 5, Transcript of Hearing, July 1, 2015, p.16). Moreover, the Board connects the dots between making false statements and perjury when the Board's decision references that subsequent to providing false testimony under oath in the Sperling matter, Horn was criminally charged with perjury. (Tab 19, Decision, p.1).

To attempt to argue that Officer Horn was terminated for conduct unbecoming related to simply making false statements under oath and not for being criminally charged with perjury as reported by national news is flagrantly absurd.

Therefore based on all the above, James Horn respectfully requests this Court to reverse the decision of the Board because Horn was denied due process and the Board's decision was clearly against the manifest weight of the evidence.

WHEREFORE, James Horn respectfully requests that this Court reverse findings and decision and restore Officer Horn to his position as a Glenview Police Officer.

Respectfully submitted,

Dated: February 22, 2016

/s/Daniel Q. Herbert
Daniel Q. Herbert
Plaintiff's Attorney

The Law Offices of Daniel Q. Herbert & Associates
206 S. Jefferson, Suite 100
Chicago, IL 60661
(312) 655-7660
Dan.herbert@danherbertlaw.com
Attorney No. 39917

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Atty. No. 80919

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES HORN,	)	
	)	
Petitioner,	)	
v.	)	
	)	
THE BOARD OF FIRE AND POLICE COMMISSIONERS FOR THE VILLAGE OF GLENVIEW; and WILLIAM FITZPATRICK, CHIEF OF POLICE FOR THE VILLAGE OF GLENVIEW,	)	15 CH 14117
	)	
Respondents.	)	

RESPONSE TO PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR ADMINISTRATIVE REVIEW

Now come Respondents, THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS (the "BFPC") and POLICE CHIEF WILLIAM FITZPATRICK ("Fitzpatrick"), by and through their attorneys Robbins, Salomon & Patt, Ltd., and for their response to Petitioner's Brief in Support of his Petition for Administrative Review, state as follows:

I. PROCEDURAL HISTORY

On June 26, 2015, Fitzpatrick filed a Complaint for Disciplinary Charges (the "Charges"), consisting of three separate charges against former Glenview Police Officer James Horn ("Horn"); specifically, (1) making false or untrue statements, (2) violating the Constitutional rights of others, and (3) conduct unbecoming a Glenview police officer (Record on Appeal, Tab 1). The essence of the Charges is that Horn, on March 31, 2014, at a hearing before Judge Catherine M. Haberkorn in the Circuit Court of Cook County (the "Sperling

Hearing"), provided false testimony under oath concerning the arrest of Joseph Sperling, which occurred in Glenview on June 6, 2013.

Hearings on the Charges were held before the BFPC on July 1, July 27 and July 28, 2015 (the "Hearings") (Record on Appeal, Tabs 5, 8 and 12). After the Hearings, both parties were given leave to file briefs containing their closing arguments. Thereafter, on August 24, 2015, the BFPC issued a written opinion determining that Fitzpatrick met his burden of proof by a preponderance of the evidence with respect to the Charges against Horn regarding making false or untrue statements, and conduct unbecoming a Glenview police officer (Record on Appeal, Tab 19). The BFPC ruled that the Chief did not sustain his burden of proof with respect to the charge of violating the Constitutional rights of others.

Based on the Charges sustained by the Chief, the BFPC terminated Horn. In accordance with the Illinois Administrative Review Law, Horn filed its "Petition for Administrative Review" with this Court, and filed its Brief in Support of said petition ("Horn's Brief"). Respondents now file the instant brief in response.

II. ARGUMENT

It is well-settled in Illinois that a court's scope of review of an administrative decision regarding discharge of a former employee is a two-step process. First, the reviewing court "must determine if the agency's findings of fact are contrary to the manifest weight of the evidence." *Dept. of Mental Health and Developmental Disabilities v. Civil Service Comm'n*, 85 Ill. 2d 547, 550 (Ill. 1981). Second, the court must determine if the findings of fact "provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist." *Dept. of Mental Health*, 85 Ill. 2d at 551. See also *Walsh v. Bd. of Fire and Police Comm'rs of the Village of Orland Park*, 96 Ill. 2d 101, 105 (Ill. 1983).

In *Dept. of Mental Health*, the Illinois Supreme Court specifically held that "whether cause for discharge exists should be determined by the administrative agency," and ruled that a decision by an administrative body as to cause "will not be reversed unless it is arbitrary, unreasonable, or unrelated to the requirements of service." 85 Ill. 2d at 552.

A. Due Process Requirements were satisfied in the Charges and in the Hearing.

Horn alleges in his Brief that his due process rights were violated by Fitzpatrick and the BFPC. This claim is wholly without merit. Further, even if Horn was able to make a good-faith argument that he did not receive sufficient notice of the Charges in violation of his due process rights, such argument was not properly preserved at the Hearing, and is waived.

1. Horn received due notice of the Charges.

Horn argues that he did not receive notice of the Charges sufficient to satisfy his due process rights. However, the Record on Appeal makes clear that due process was satisfied. The Charges clearly set forth the facts leading to the Charges (*i.e.*, Horn's testimony at the Sperling Hearing), references specific testimony provided during the Chief's interrogation of Horn, and cites the specific sections of the Glenview Police Department Rules and Regulations that Horn was alleged to have violated (Record on Appeal, Tab 1).

While administrative proceedings are governed by the fundamental principles and requirements of due process of law, "due process is a flexible concept and requires only such procedural protections as fundamental principles of justice and the particular situation demand." *Abrahamson v. Illinois Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 92-93 (1992); *Scott v. Dep't of Commerce & Community Affairs*, 84 Ill. 2d 42, 51 (1981). The due process requirements in an administrative proceeding are not as stringent as those in a judicial proceeding. *Abrahamson*, 153 Ill. 2d at 92.

"It is settled that the charges or complaint in an administrative proceeding need not be drawn with the same precision, refinements, or subtleties as pleadings in a judicial proceeding. Rather, the charge in an administrative proceeding need only reasonably advise the respondent as to the charges so that he or she will intelligently be able to prepare a defense." *Id.*; *see also Dharmavaram v. Dep't of Prof'l Regulation*, 216 Ill. App. 3d 514, 530 (1st Dist. 1991); *Ballin Drugs, Inc. v. Dep't of Registration & Education*, 166 Ill. App. 3d 520, 526 (1st Dist. 1988); *Brija v. Bd. of Fire & Police Commissioners*, 202 Ill. App. 3d 363 (1st Dist. 1990); *Altman v. Bd. of Fire & Police Commissions*, 110 Ill. App. 3d 282 (2d Dist. 1982). The complaint need only reasonably apprise the respondent of the charges against him. *Wierenga v. Bd. of Fire & Police Commissioners*, 40 Ill. App. 3d 270, 274 (1st Dist. 1976).

In the matter at bar, the Charges clearly set forth sufficient information to reasonably advise Horn as to the charges, such that he had the opportunity to intelligently be able to prepare a defense (Record on Appeal, Tab 1). In his Brief, Horn repeatedly references a charge of perjury. While Horn has indeed been criminally charged with perjury, that criminal charge was not part of Charges or the Hearings. In fact, BFPC Chairman Gino DiVito specifically reminded Horn's counsel of that fact on several occasions (Record on Appeal, Tab 5, at p. 9; Tab 8, at p. 80; Tab 12, at p. 62-64, 68-69).

Horn's claim in his brief that his counsel "was still unclear about the specific charges he was defending" is insufficient to establish a violation of Horn's due process rights. The plain language of the Charges – which do not in any way reference a charge of perjury against Horn – makes clear the nature of the Charges sufficient for Horn to be apprised of same. This is particularly true in the context of an administrative hearing, where the rules concerning notice are less stringent than those in a judicial proceeding. Chairman DiVito's repeated statements

on the record that perjury was not part of the Charges are sufficient to establish that Horn's position on this issue is disingenuous, at best.

Horn's continued insistence that the Charges are inherently tied in to a violation of a specific law is similarly without basis. Charge No. 1, relating to making false or untrue statements, relies in part on Rule 8.3 of the Glenview Police Department Rules and Regulations. While one of the subsections of Rule 8.3 cited by the Chief prohibits a "violation or attempted violations of any Federal, State, County or Municipal law," the Charges also reference subsections of Rule 8.3 that require police officers testifying in court to be prepared for trial, and to testify in a truthful manner. Charge No. 3, relating to conduct unbecoming a Glenview police officer, relies in part on Rule 8.3 as well, referencing the prohibition contained therein against conduct that "adversely affects the morale or efficiency of the Department" (Record on Appeal, Tab 1).

As set forth above, the Charges that were sustained by the BFPC are clear and unambiguous. Counsel for Horn's purported misunderstanding of the nature of the Charges does not create a due process concern. Further, counsel for Horn's repeated insistence at the Hearing on conflating his client's pending criminal charge for perjury with the administrative hearing that was before the BFPC, as well as his continued misapprehension of the nature of the Charges against his client, cannot be used as a basis to "create" a due process violation where none exists.

The Charges sufficiently set forth the nature of the proceeding against Horn, and as such, no due process violation exists.

2. In the unlikely event this Court finds that a due process violation existed, Horn has waived the issue.

Even assuming, *arguendo*, that Horn can establish some form of due process violation, Horn's failure to properly preserve the issue at the Hearing has caused the issue to be waived. Failure to raise an issue before an administrative body – even a question of constitutional due process rights – waives the issue for review. *S.W. v. Dep't of Children & Family Services*, 276 Ill. App. 3d 672, 679 (1st Dist. 1995); *Smith v. Dep't of Prof'l Regulation*, 202 Ill. App. 3d 279, 287 (1st Dist. 1990).

In his Brief, Horn raises for the first time the claim that the Charges were "not specific in nature to adequately put Horn on notice as how Horn's conduct violated the Rules and Manual." At the Hearing, and in his closing brief (Record on Appeal, Tab 17), Horn's claims regarding due process relate to his mistaken insistence that the Charges included a count for perjury. At no time did Horn claim that he received insufficient notice of how his conduct resulted in the Charges. As indicated above, the Charges were sufficient to satisfy the due process requirements of an administrative hearing, but even if they were not, Horn's failure to properly raise the issue before the BFPC acts as a waiver.

Further, in his Brief, Horn claims that his motion for a bill of particulars was "summarily denied" by the BFPC. However, this claim is not supported by the Record on Appeal. In fact, Horn's oral request for a bill of particulars occurs during a lengthy colloquy between Horn's counsel and Chairman DiVito late in the third day of the Hearings, and the BFPC never ruled on the request (Record on Appeal, Tab 12, pp. 58-73). Horn did not raise the issue previous to that time, failed to follow up on the request for a bill of particulars, and

did not claim that the failure to rule on the request violated Horn's due process rights. Horn cannot use his counsel's failure to make a record as a basis to overturn the BFPC's ruling.

B. The BFPC's findings of fact are not against the manifest weight of the evidence.

Pursuant to the Administrative Review Act, in a matter of administrative review, the "findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110. The credibility of the witnesses, the weight given to their testimony, and the inferences to be drawn from the evidence are all within the BFPC's province. *Valio v. Bd. of Fire and Police Comm'rs of the Village of Itasca*, 311 Ill. App. 3d 321, 329 (2d Dist. 2000).

An administrative tribunal's finding of cause for discharge "commands respect" and "substantial" or "considerable deference." *Walsh v. Bd. of Fire & Police Comm'rs of Vill. of Orland Park*, 96 Ill. 2d 101, 106 (1983); *Blunier v. Bd. of Fire & Police Comm'rs of City of Peoria*, 190 Ill. App. 3d 92, 107 (3d Dist. 1989). The BFPC has "considerable latitude" and "considerable discretion" in determining what constitutes cause for discharge and a decision will stand even if the court were to consider another sanction more appropriate. *Walsh*, 96 Ill. 2d at 106; *Kvidera v. Bd. of Fire & Police Comm'rs of the Vill. of Schiller Park*, 192 Ill. App. 3d 950, 965 (1st Dist. 1989).

The court "cannot sit as a super-commission in reviewing the punishment imposed." *Kappel v. Police Bd. of City of Chicago*, 220 Ill. App. 3d 580, 589-90 (1st Dist. 1991). The BFPC, rather than the court, is best able to determine the effect of the officer's conduct on the proper operation of the department. *Jones v. Civil Service Commission*, 80 Ill. App. 3d 74, 76 (5th Dist. 1979); *Kvidera*, 192 Ill. App. 3d at 965.

Further, an administrative agency decision is against the manifest weight of the evidence only if all reasonable people would find the opposite conclusion is clearly evident. *Abrahamson v. Illinois Dept. of Professional Regulation*, 153 Ill. 2d 76, 88 (Ill. 1992); *Bono v. Chicago Transit Authority*, 379 Ill. App. 3d 134, 143 (1st Dist. 2008). The Illinois Supreme Court in *Abrahamson* stated that "it is not a court's function to reweigh the evidence or make an independent determination of the facts .... The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings. The reviewing court may not substitute its judgment for that of the administrative agency. If the record contains evidence to support the agency's decision, it should be affirmed." *Abrahamson*, 153 Ill. 2d at 88.

In the matter at bar, the record supports the BFPC's Decision. Both parties presented testimony and documentary evidence. Both parties had the opportunity to cross-examine witnesses, and challenge submitted evidence.

It is undisputed that on June 6, 2013, Horn participated in the arrest of Joseph Sperling, and that after the arrest of Sperling, Horn prepared a written case report. It is further undisputed that prior to Horn's testimony at the Sperling Hearing on March 31, 2014, he did not have an independent recollection of the specifics of the Sperling traffic stop. Notwithstanding the fact that he did not have an independent recollection, Horn provided sworn testimony in open court concerning the specific facts of the traffic stop. It is also undisputed that Horn's testimony was inconsistent with the video of the traffic stop that was played in open court. By his own admission, Horn's testimony at the Sperling Hearing was inaccurate. Horn also stated that he knows (a) an officer testifying on a criminal matter should do so based on his own personal knowledge; (b) at the Sperling Hearing, he should

have testified differently than he did; and (c) his testimony at the Sperling Hearing should have been that he did not recall the specific facts of the traffic stop.

Fitzpatrick's undisputed testimony was that Horn was untruthful in his testimony at the Sperling Hearing, and that said untruthful testimony caused damage to the Glenview Police Department by calling into question the credibility of the entire department, and was a "black eye" for the department. Fitzpatrick further testified that having officers that are credible is essential to the efficient operation of the police department.

Based on the testimony and evidence presented at the Hearing, the BFPC concluded that Fitzpatrick established by a preponderance of the evidence that Horn made false and untrue statements at the Sperling Hearing, in violation of Rule 8.3, Subsections 31 and 32 of the Glenview Police Department Rules and Regulations. The BFPC further held that Fitzpatrick established by a preponderance of the evidence that Horn's untruthful testimony at the Sperling Hearing had an adverse impact on the morale, efficiency and/or credibility of the Glenview Police Department, in violation of Rule 8.3, Subsection 38 of the Glenview Police Department Rules and Regulations. Placing substantial weight on the evidence presented at the Hearing concerning the need for credibility of police officers, both in court and in the community, the BFPC determined that the appropriate sanction for Horn was termination (Record on Appeal, Tab 19).

III. CONCLUSION

Upon administrative review, a petitioner must show that the administrative decision is against the manifest weight of the evidence by establishing that **all** reasonable people would find the opposite conclusion is clearly evident. In his brief, because the basic facts are undisputed (*i.e.*, Petitioner gave untruthful testimony at the Sperling Hearing, thus negatively

impacting the morale, efficiency and credibility of the Glenview Police Department), Petitioner repeatedly seeks to have this Court substitute the actual charges sustained against Petitioner for the criminal charge of perjury, which was not a matter before the BFPC. Under the due process requirements for administrative hearings, Petitioner clearly was provided adequate notice of the nature of the charges against him, and Petitioner's repeated insistence on attempting to turn the administrative proceeding into a criminal trial is improper.

The BFPC's findings and conclusions on questions of fact are held to be *prima facie* true and correct, including the credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence. Contrary to what Petitioner requests in his brief, it is not for this Court to re-weigh the evidence, or to make an independent determination of the facts. Even if this Court were to determine that an opposite conclusion is reasonable or that this Court might have ruled differently, a basis to overturn the BFPC's administrative findings does not exist.

Further, if the findings of fact provide a sufficient basis for the BFPC's conclusion that cause for discharge of Petitioner existed, this Court must affirm the BFPC's decision. In Illinois, whether cause for discharge exists is the BFPC's province, and such a ruling cannot be reversed unless it is arbitrary, unreasonable, or unrelated to the requirements of service. In fact, substantial deference is afforded the BFPC in making that determination.

In the matter at bar, Petitioner has clearly failed to establish that the BFPC's decision was arbitrary, unreasonable or unrelated to the requirements of service. In short, the BFPC found that Petitioner provided untrue testimony under oath (a fact to which Petitioner admits), and that such conduct had an adverse impact on the morale, efficiency and/or credibility of the Glenview Police Department. As indicated herein, due notice of the Charges was given to

Petitioner, and the BFPC's findings of fact and conclusions concerning the testimony and the evidence are supported by the record. As such, the BFPC's Decision is appropriate and sufficient to withstand administrative review.

For the foregoing reasons, the Petition for Administrative Review filed on behalf of Petitioner James Horn should be denied, and the decision of the Board of Fire and Police Commissioners for the Village of Glenview should be affirmed.

Respectfully submitted,

[redacted]

Attorney for Respondents the Board of Fire and Police Commissioners of the Village of Glenview, Illinois and Police Chief William Fitzpatrick

Eric G. Patt
Robbins, Salomon & Patt, Ltd.
Attorneys for Respondents
2222 Chestnut Avenue
Glenview, IL 60026
(847) 729-7300
Firm I.D.: 80919

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES HORN	)	
Petitioner,	)	
	)	**No. 15-CH-14117**
vs.	)	
	)	**Judge Diane J. Larsen**
	)	
THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF GLENVIEW, ILLINOIS and POLICE CHIEF WILLIAM FITZPATRICK	)	**Board No.: 2015-001**
Respondents.	)	

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR ADMINISTRATIVE REVIEW

Now comes the Petitioner, JAMES HORN, by and through his attorneys, The Law Offices of Daniel Q. Herbert and Associates, and respectfully presents his Reply Brief in Support of his Petition for Administrative Review. The Petitioner replies as follows:

As a threshold matter, James Horn respectfully refers the Court to, and reiterates, all of the arguments made in his initial brief and herein replies to certain arguments made by Respondent in its Response to Petitioners. In his initial brief, Horn alleged violations of due process and in response, the Respondents contend that Horn received sufficient notice of the charges lodged against him to satisfy due process. The Respondents also argues that Horn repeatedly referenced a charge of perjury in his brief, but Horn's charges did not encompass perjury.

The Respondent's argument conveniently ignores that Charge I of the complaint specifically stated that Horn had violated a law, yet no law was ever identified in the charges or

during the hearing despite Horn's inquiries and insistence. The complaint alleged a violation of Rule 8.3(1), which is entitled "Violation or attempted violation of any Federal, State, County, or Municipal law." (Tab 1, Complaint). Despite this obvious and express reference to a violation of law, nowhere in their brief do Respondents identify what law Horn was alleged to have violated. Upon review this court will find that the record provides the Board was not even aware of what law Horn was alleged to have violated. The Board stated that Horn was not charged with perjury yet the Board offered that Horn "was charged in a vague way of violating the county and state municipal ordinance." (July 28, 2015 Transcript, p.64). Moreover, the Respondents also fail to address the dearth of specificity in the charge which caused the Board to speculate that it believed the charge could be related to *any* violation of justice. *Id.* at 63.

Despite the Respondent's insistence that Horn's charges were sufficient to satisfy due process, the record is unequivocally clear that Horn was not given sufficient notice of the allegations and this denied Horn due process and a fair trial. Case law mandates that notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970). Here, the record demonstrates that Horn's counsel believed that the law Horn violated was perjury, but during the hearing, the Board did not even know what law Horn was charged with violating, nor did the Chief indicate what law Horn violated at any time during the proceeding.

Horn was entitled to a fair trial which is a basic requirement of due process. *Scott v. Department of Commerce & Community Affairs*, 84 Ill.2d 42 at 54, quoting *In re Murchison*, 349 U.S. 133, 136 (1955). The Constitutional guarantee of due process of law entitles any litigant to a fair and impartial trial before a court which proceeds neither arbitrarily or capriciously. *City of Chicago v. Cohn*, 326 Ill. 372, 374 (1927). Here, the Board is an administrative agency and is not exempt

from due process. A fair trial is a principle that applies to administrative agencies which adjudicate as well as to courts. *Scott* at 54-55, citing *Withrow v. Larkin*, 421 U.S. 35, 46 (1975). Moreover, section 3-111(b) of the Administrative Review Law states:

> "Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the court that such error of failure materially affected the rights of any party and resulted in substantial injustice to him or her." 735 ILCS 5/3-111(b)

Additionally, an administrative agency cannot base its decisions upon facts, data and testimony which do not appear in record; findings must be based on evidence introduced in the case, and nothing can be treated as evidence which is not introduced as such. *Cook County Federal Sav. & Loan Ass'n v. Griffin*, 73 Ill.App.3d 210.

Due process of law presupposes fair and impartial hearings and on administrative review, a court's duty is to examine the methods employed at the administrative hearing, to insure that a fair and impartial procedure was used. *Abrahamson v. Illinois Dep't of Professional Regulation*, 153 I11.2d 76 (1992). Judicial review of an agency's decisions regarding the conduct of its proceedings is governed by an "abuse of discretion" standard; the agency's actions are subject to reversal only if there is demonstrable prejudice to the complaining party. *Weber v. Winnebago County Officers Electoral Board*, 2012 IL App.2d 112113.

Applying the relevant case law to the issue here, there is no question that Horn was deprived of due process. The Chief's charges alleged Horn violated a law, yet the record is absent of any evidence that the Chief or Board ever informed Horn of what law was violated. Consequently, there is no evidence to support the Board's decision finding Horn guilty of violating Charge I. Moreover, the Board was manifestly aware of the insufficiency of the

charges, yet it allowed the hearing to continue despite Horn's requests for a bill of particulars or a continuance.

The Respondents also argue that Horn waived any due process issues during the course of the hearing. This argument is meritless because the record is clear that Horn's counsel requested a bill of particulars, asked for a continuance, and made and preserved a due process argument. (Tab 12, July 28, 2015 Transcript, pp.63-64, 68). The evidence on record indicates that the Board failed to grant Horn's motion for a bill of particulars and Horn's request for a continuance in spite of being fully aware that Charge I was deficient.

In summary, the Chief's charges did not grant Horn sufficient notice required under due process and the Board failed to act in a fair manner by refusing to grant a continuance or a motion for a bill of particulars. These actions materially prejudiced Horn and led to an unjust decision. As a direct result of all the above, the Board's findings and decision must be reversed as a matter of law.

WHEREFORE, James Horn respectfully requests that this Court reverse the Board's findings and decision and restore Officer Horn to his position as a Glenview Police Officer.

Respectfully submitted,

Dated: March 28, 2016

/s/Daniel Q. Herbert
Daniel Q. Herbert
Plaintiff's Attorney

The Law Offices of Daniel Q. Herbert & Associates
206 S. Jefferson, Suite 100
Chicago, IL 60661
(312) 655-7660
Dan.herbert@danherbertlaw.com
Attorney No. 39917

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Horn

v.

No. 15 CH 14117

Village of Glenview Board of Fire and Police Commissioners, et al.

ORDER

THIS CAUSE, coming to be heard on Petitioner's Complaint in Administrative Review, all Parties receiving notice, the issue having been Fully briefed, and the Court otherwise fully advised in the Premises;

IT IS HEREBY ORDERED:

(1) The Decision of the Village of Glenview is hereby affirmed, and Petitioner's Complaint is hereby DENIED, based on:

a. No due process violation, as the Charges adequately and sufficiently notified Petitioner of the charges against him; and

b. The Decision of the Board of Fire and Police Commissioners is not against the manifest weight of the evidence.

Atty. No.: 80919

Name: E. Patt / Robbins, Salomon & Patt

Atty. for: Respondents

Address: 2222 Chestnut Ave.

City/State/Zip: Glenview IL 60026

Telephone: 847 / 729-7300

ENTERED:

ENTERED
JUDGE DIANE J. LARSEN-1771
MAY 05 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Dated:

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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